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MAGAZINE
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Britain's Attack on Civil Liberties

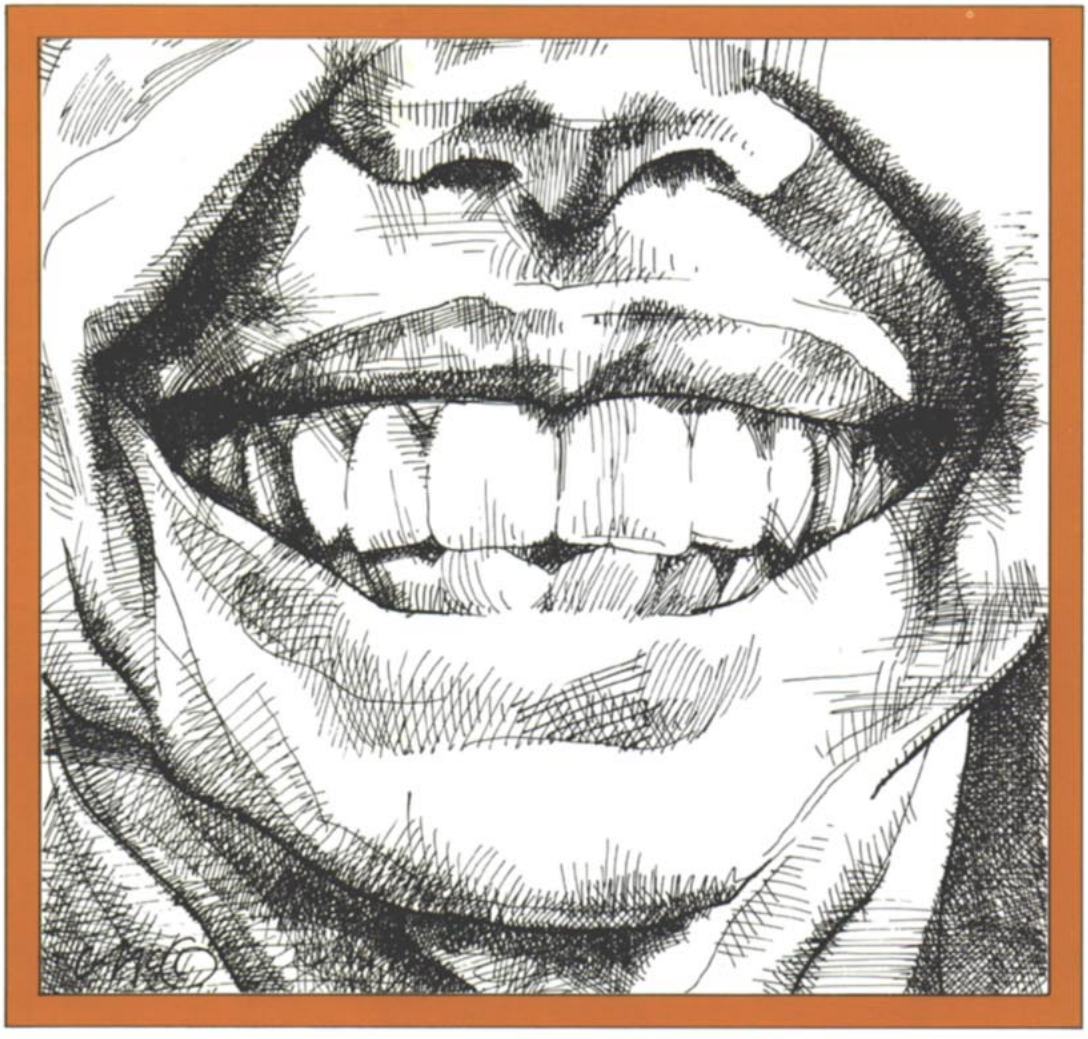
Colorado's Sunset Law Is Setting

Hentoff: *Protecting Reporter's Sources*

The Crisis of Liberal Internationalism

HUMAN RIGHTS HYPOCRISIES

By EARL C. RAVENAL



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Stop the hurt.

It won't take much to stop the hurt of child abuse.
If we all do just one thing, no matter how small, we can help stop the pain over a million children feel each year. Below are a few suggestions.
Commit yourself to one and do your part to stop the hurt.

I want to stop the hurt.
(I'll check the commitment I've made and mail it in.)

- ☐ I'll show my child some love. (Sometimes I forget.)
- ☐ All I know about child abuse is hearsay. I'd like some facts. I'll mail in this coupon.
- ☐ I'll treat my child as a person, not a possession.
- ☐ I'll praise my children more often.
- ☐ I'll volunteer time to my local child abuse prevention organization. If there is none, I will try to start one.
- ☐ I'll spend more time with my children, starting tonight.
- ☐ I'll learn painless ways to tell my child "No".
- ☐ I'll learn the difference between discipline and abuse.
- ☐ I'll try to help a troubled parent by being a foster parent for a while.
- ☐ I'll treat my children the way I wish I had been treated as a child.
- ☐ I have a problem. I'm going to start talking about it.
- ☐ I'll help a troubled parent. I'll be a friend and a good listener. After all, it shouldn't hurt to be a parent, either.
- ☐ I'd like a one-year membership in the National Committee for Prevention of Child Abuse. Enclosed is $10.00.

prevent child abuse.
write: Box 2866, Chi., IL 60690
National Committee for Prevention of Child Abuse

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"I'VE WORKED DAY AND night to make sure that a concern for human rights is woven through everything our government does," Jimmy Carter told his December 16 press conference. But in this issue, Earl C. Ravenal makes a close inspection of Carter's human rights wares and finds that they are woven, warp and woof, with the thread of hypocrisy.

Carter's year of human rights
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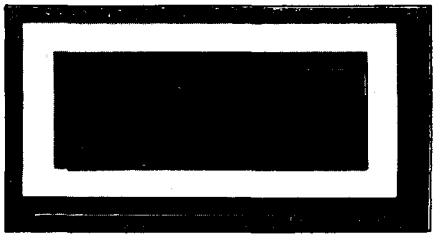

The quality of Justice

■ A federal judge rejected yesterday an FBI agent's attempt to prevent his employer from transferring him as a disciplinary measure because he was living with a woman out of wedlock. . . .

The FBI contended that [Agent] Colwell violated a Justice Department code of conduct. The code specifically covers conflict of interest, financial disclosure, improper use of entertainment and other kinds of conduct, but contains no specific section on improper sexual conduct. . . .

But the government's attorney, Joseph A. Fisher, told the court that the government does not concede that there exists a difference between criminal and moral conduct and characterized the agent's conduct as both immoral and criminal.

—Washington Post, Nov. 19, 1977

■ Justice Department investigators have recommended against prosecuting any present or former FBI officials for alleged "abuses of power" involving bureau funds, services or materials, The Times learned Friday.

—Los Angeles Times, Nov. 19, 1977

Getting 'em where they live

■ The White House has ordered the Defense Department to conduct a major review of contingency plans for waging nuclear war against the Soviet Union. . . .

A major impetus for the new study appears to be a growing interest in nuclear targeting on the part of the President's national security adviser, Zbigniew Brzezinski. . . .

Mr. Brzezinski, officials said, believes that nuclear doctrine needs to be more closely tied to the Administration's overall political strategy toward the Soviet Union. In particular, he is said to contend that the Pentagon's nuclear strike plan should be designed to exploit potential Soviet fears, such as threatening Moscow's food supply or making a target of Russian troops in the Far East so that the Soviet Union would be more vulnerable to attack from China.

"In the past," a White House official said, "nuclear targeting has been done by military planners who have basically emphasized the efficient destruction of targets. But targeting should not be done in a political vacuum.

"Some targets are of greater psychological importance to Moscow than others, and we should begin thinking of how to use our strategic forces to play on these concerns."

—New York Times, Dec. 16, 1977

Getting 'em where they don't live

■ U.S. Drug Enforcement Administration officials say they prefer to catch drug traffickers outside the United States because of greater likelihood they would be prosecuted, according to interviews with American agents here [Mexico City] and the Mexican attorney general.

One U.S. agent who has been stationed here said drug cases had "less chance of being thrown out of court" when offenders are caught outside the United States.

"The Americans want us to catch them here," Mexican Attorney General Oscar Flores said. "They say we crack down harder."

—Washington Post, Dec. 11, 1977

A Sony that will live in infamy

■ Representative Richard T. Schulze (R-Pa.) commemorated the anniversary of Pearl Harbor with some suggestions about present Japanese-American relations:

"I submit that 36 years later the United States has yet again fallen under attack. As in 1941, our social and economic system must be maintained. It is my hope that the Members of this body are willing to commit their efforts and a small part of their resources to repulse the assault from abroad.

"The attack of which I speak is, of course, economic. The source is the same today as it was on December 7, 1941. One has only to consider the trade figures for the preceding montho realze how extensively our defenses have been breached. In the month of November, this Nation imported $3 billion more than we exported. In large part these were: Japanese televisions, Japanese automobiles, Japanese watches and most of all, Japanese steel.

". . . I ask the Members of this body to respond as immediately and forcefully to foreign economic assault in 1977 as we did to foreign military attack in 1941."

—Congressional Record, Dec. 7, 1977

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China after Mao

Will any flowers bloom?

EVER SINCE CHINESE COMMUnist Party Chairman Hua Kuo-feng and Defense Minister Yeh Chien-ying staged their coup against Chiang Ch'ing and her allies, newspapers in the West have been filled with stories of liberalization in China. Enchanted with the notion of politics as pragmatism and problem-solving, American pundits and political leaders have welcomed Hua's rise to power, believing that China's post-Mao rulers are political realists like themselves.

Yet, looking at the policies of the new Chinese leaders, we can find little evidence of liberalization, except, to a carefully controlled extent, in the arts. Indeed, recent events seem to portend not greater freedom, but a period of more rigorous control by the government and party.

The efforts of Mao and Chiang during the Cultural Revolution to build groups parallel to the party, and to purge the party itself, were reversed after Mao's death by a coalition of party veterans and military leaders. Judging by the jubilation that greeted Chiang's downfall, this coup had the support of China's populace: After all, to keep the masses in their place, Chiang's official Cultural Revolution group had preached egalitarianism and arid cultural conformity —while Chiang herself lived in the imperial splendor described by Roxanne Witke.

Now Yeh Chien-ying sets forth plans for increased party discipline, and the *Liberation Army Daily* attacks Chiang's associate Wang Hung-wen for authorizing civil disobedience by soldiers. At the same time, Hua tells the people that the party could never turn into a parasitic "new class."

Whereas Mao and Chiang had stressed decentralization of the economy, the Hua government's reforms, which are being implemented by Teng Hsaio-p'ing, divide China into economic regions in a way that strengthens the power of the central authorities. The newspapers are now filled with denunciations of the "gray markets," which were legitimized during the past decade as "cooperation" between enterprises. Stricter subordination of the rural communes to the center will be enforced by Stalin-style Machine Tractor Stations controlling all heavy farm machinery. Once allowed some leeway in rural markets, peasants are now promised two decades of rapid industrialization—carried out at their expense. The Hua government seems determined to end Mao's propeasant orientation in order to modernize the military and to aid urban dwellers.

Nor does there seem to be much hope that China's leaders will show increased respect for human rights. As recent articles by Ross Munro of the *Toronto Globe and Mail* well illustrate, China remains a tightly regimented society. Workers are under close scrutiny and supervision both by workplace and residential units, travel and job mobility are strictly controlled, and conditions in penal labor camps are harsh. In the current "third phase" of the campaign against Chiang and her associates, the new leadership has revived trials by mass rally and public executions. And the rise from obscurity of Wang Tung-hsing, commander of the palace guard and head of Mao's own intelligence unit, may indicate a turn from control by Maoist mass mobilization to the use of more traditional police methods.

(China's bleak record on human rights receives rather scanty coverage in the American press. Perhaps this is because the Carter administration stresses the Soviet Union as a human rights violator while benignly omitting any discussion of China—America's de facto ally in conflicts from Bangladesh to Angola.)

In short, the old guard of the party is in charge again, and the peasants can look forward to forced-draft industrialization organized by a privileged group of technocratic planners. We think it stretches the bounds of credulity to call this liberalization. ❏

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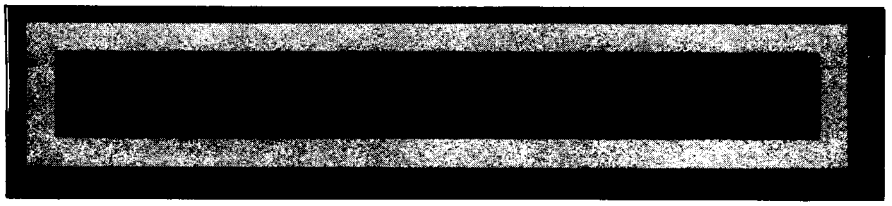

NAT HENTOFF

Hidden sources and dozing journalists

THE PRESS HAS A NEARLY absolute right to publish whatever news it is able to gather. So the Supreme Court has ruled in a series of decisions—from *Near* v. *Minnesota* (1931) to *Nebraska Press Association* v. *Stuart* (1976). There can be no prior restraint—no government censorship—except perhaps on the printing of vital military information in time of war. In view of the likely nature of the next war, there will be no time to censor; thus that limitation is academic.

After publication, punishment of the press is possible, as in libel suits or obscenity prosecutions. Those of us who interpret the First Amendment strictly—"no law . . . abridging the freedom . . . of the press" means *no* law—believe that postpublication sanctions are also unconstitutional. But we have not yet carried the day.

If the issue of prior restraint has been settled for some time to come, it is also evident, however, that the gathering of news is not protected as fully by the First Amendment as is the publication of what has finally been assembled. The press, for instance, does not have complete access to wherever it wants to go. Grand jury sessions and certain pretrial hearings have been closed to reporters. The press is usually barred from family courts and their equivalents. And in a case now before the Supreme Court, San Francisco television station KQED is pressing for admittance to Alameda County jail to film the allegedly appalling conditions there, but it may not succeed. During oral arguments, a number of the justices appeared quite hostile to the notion that the press has a special privilege of access to prisons that the public does not share.

In another area central to the gathering of news—the protection of confidential sources—the Supreme Court has already spoken. In 1972 (*Branzburg* v. *Hayes*), the Court dealt with three journalists who had been subpoenaed to testify before federal and state grand juries. The newsmen claimed a privilege, under the First Amendment, which would enable them to refuse to answer questions about confidential sources. One—Earl Caldwell of the *New York Times*—also said he had a right not to appear before the grand jury at all because by doing so, in secret, he would create so much apprehension among his sources as to lose them.

BY A 5 to 4 VOTE, THE COURT, with all four Nixon appointees among the majority, held that reporters have "no First Amendment privilege to refuse to answer the relevant and material questions asked during a good faith grand jury investigation." Reporters, of course, could continue to use confidential sources and no attempt would be made to force them to disclose those sources "indiscriminately." But under certain circumstances, journalists might have to reveal such identities because there is no absolute constitutional privilege for the press in this matter.

In his strenuous dissent, Mr. Justice Douglas said that "a newsman has an absolute right not to appear before a grand jury." Should he voluntarily appear, the journalist "may invoke his First Amendment privilege to specific questions." What of the argument that the First Amendment must be balanced against the government's need for efficient law enforcement? "My belief," Douglas said, "is that all of the 'balancing' was done by those who wrote the Bill of Rights. By casting the First Amendment in absolute terms, they repudiated the timid, watered-down, emasculated version of the First Amendment" which the government has advanced in this case.

Mourning that day's decision against the press, Douglas warned: "A reporter is no better than the source of his information. Unless he has a privilege to withhold the identity of his source, he will be the victim of governmental intrigue or aggression. If he can be summoned to testify in secret before a grand jury, his sources will dry up and the attempted exposure, the effort to enlighten the public, will be ended. If what the Court sanctions today becomes settled law, then the reporter's main function in American society will be to pass on to the public the press releases which the various departments of government issue."

At the time, most journalists, including this writer, fully shared Douglas's gloom. We predicted mass defections by chilled sources, and some of us, rather dramatically, assured especially fruitful sources that we would go to jail rather than put the finger on them. "Well," said Earl Caldwell, the realist among us, "I might go to jail once, but I'd think a lot about going a second time, even for a very good source."

We predicted mass defections by chilled sources, and some of us assured our most fruitful ones that we would go to jail rather than put the finger on them.

DURING THE PERIOD IM- mediately after the *Branzburg* decision, some sources did dry up. But fairly soon, most reporters were doing business as usual and feeling a bit foolish about the exceedingly bleak predictions we had been making about the consequences of the case.

On the other hand, some reporters *have* gone to jail rather than reveal confidential sources: Peter Bridge in New Jersey, William Farr and a number of other journalists in California, and a few elsewhere. By and large, however, the decision has had less of a chilling effect than expected. For one thing, press shield laws have been passed in some 25 states. (The Supreme Court's decision did not preclude individual states, or the Congress, from providing a newsman with such a privilege by statute.) The state protections are of varying breadth and

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efficacy, but they have generally been working for journalists in civil cases. The record in criminal proceedings, however, is not as sanguine: A number of reporters have lost their claim to immunity from testifying or producing notes, outtakes, and other material considered central to the case.

"Curiously," says a lawyer who defends many journalists around the country in these circumstances, "most courts appear to have adopted one of the dissenting decisions in *Branzburg* as the law—not Douglas's absolute stance, but the more qualified dissent of Potter Stewart. In effect, the courts and the press have quietly worked out an accommodation along the lines set by Stewart."

In his dissenting *Branzburg* opinion, Stewart chastised the majority of the Court for saying that a reporter called before a grand jury has no First Amendment right to protect his sources. "The Court thus invites state and federal authorities to undermine the historic independence of the press by attempting to annex the journalistic profession as an investigative arm of government. . . .

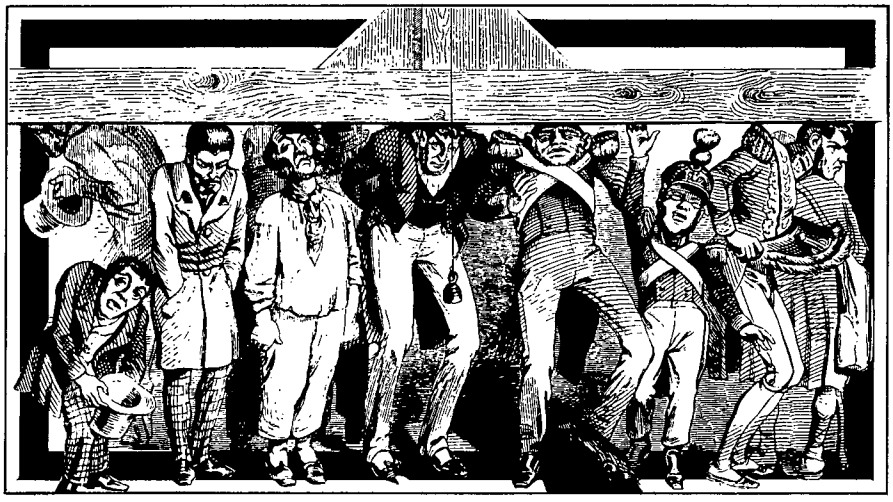
"The right to gather news," Stewart continued, "implies . . . a right to a confidential relationship between a reporter and his source." But unlike Douglas, Stewart did not see this right as absolute. There may be times when a reporter has to testify—but only under certain conditions:

> The government must (1) show that there is probable cause to believe that the newsman has information that is clearly relevant to a specific probable violation of law; (2) demonstrate that the information sought cannot be obtained by alternative means less destructive of First Amendment rights; and (3) demonstrate a compelling and overriding [state] interest in the information.

In sum, the burden of proof must be on the government if it is to compel a reporter to testify and, if need be, to disclose confidential sources.

STEWART'S CRITERIA, TOO, can be perilous—depending as it does on the sensitivity to the First Amendment of the prosecution, the defense, or the judge in a particular case.

"My view," says a highly experienced legal source (who insists on anonymity), "is that although these criteria, when carefully applied, have been working out reasonably well for the majority of journalists involved in these situations, the future can be dangerous. Actually, journalists may well be living in a fool's paradise because they now believe that *Branzburg* was not as dreadful as they had first supposed. But it seems to me that the judicial climate toward the press could be changing. Look at those extraordinarily harsh questions asked by some of the Supreme Court justices during oral arguments on the KQED case, concerning access to prisons. My point is that while we have reached a kind of accommodation around the country, largely on the basis of Stewart's dissent, that might well change. Journalists tend to relax too quickly. They're still in instant peril."



Take Jay Shelledy who, as a reporter for the Lewiston, Idaho, *Morning Tribune,* wrote a story in 1973 about the shooting of a suspect by Michael Caldero, an undercover agent for the Idaho State Bureau of Narcotics and Drug Enforcement. Caldero said he had fired in self-defense when the suspect tried to run him down with a car. The reporter, however, quoted an unnamed "police expert" who professed to demonstrate logistically that Caldero had had no justification for shooting and had either panicked or been "carried away."

Caldero sued the newspaper for libel and demanded that the reporter reveal the identity of the "police expert" who, he claimed, had defamed him. Shelledy refused to comply and was held in contempt by the state district court. On appeal, the Idaho Supreme Court ruled, by a 3 to 2 vote, that the contempt ruling was correct because Idaho does not have a newsman's shield law and because the Supreme Court had declared in *Branzburg* that reporters do not have an absolute constitutional privilege to refuse to reveal confidential sources.

The newspaper appealed to the Supreme Court which, in October 1977, refused to hear the appeal. That means it was impossible to find four justices—the necessary number to grant *certiorari*—who felt any compelling constitutional need to reexamine what had been held in *Branzburg*. And so the Idaho Supreme Court has prevailed: "We cannot accept the premise that the public's right to know the truth is somehow enhanced by prohibiting the disclosure of truth in the courts of the public."

Caldero v. *Tribune Publishing* may well have particularly unpleasant reverberations because libel suits appear to be increasing and many highly controversial stories are, of course, based on confidential sources.

ANOTHER ILLUSTRATION of continued post-*Branzburg* is the plight of a renowned *New York Times* investigative reporter, Seymour Hersh. A Florida grand jury was investigating a baroque and possibly quite illegal covert caper by the Internal Revenue Service ("Operation Leprechaun"). When the grand jury completed its report, Federal Court Judge C. Clyde Atkins ordered the document sealed. Somehow Hersh obtained a copy and printed a story based on the report. Atkins was furious and has been pursuing the reporter to get him into court and force him to disclose the identity of whoever gave him the report. Last October, the judge ordered Attorney General Griffin Bell to subpoena Hersh and make him talk. Atkins has added that if necessary, even more pressure can be placed on Hersh by giving him immunity from criminal prosecution. Ditch the source, and you can walk. Be a hero, and you're going to do time.

"If Hersh is jailed, and a few other well-known reporters," says my experienced legal source, "a lot of their col-

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leagues are going to wake up to realize that the *Branzburg* ruling still does put them on the line. And then, since there is hardly any hope that this Supreme Court is going to change its mind, they'll start organizing to get a federal newsman's shield law. They may not realize it now, but they need it."

In the months immediately following *Branzburg*, there was considerable press momentum to get such a law enacted, and several were introduced in Congress. The effort dissolved in division because there was no consensus among reporters', editors', and publishers' organizations as to how that bill should read. Should there be an absolute privilege, as Mr. Justice Douglas had maintained? But in that case, what about the kind of story that recently almost put a New Jersey reporter in jail? John Banaszewski of the Bergen *Record* had tape-recorded a jail interview with a murder suspect who was about to go to trial. The defendant told the reporter that his brother had committed the murders and then he, in an access of rage, had killed his brother.

THE JUDGE ORDERED the Bergen *Record* to turn over the tapes. Not only was the source not confidential (he could not have been more visible in the story), but the incident involved an actual confession concerning a pending trial. The paper insisted that the tapes were protected from forced disclosure by the First Amendment (part of the newsgathering process) and by the very broad New Jersey shield law. Not so, said the judge, citing the *Branzburg* decision. Moreover, he added, the tapes are vital evidence in the murder trial. What can be a more compelling state interest than the need to get those tapes? After all, the court said, "the very integrity of the judicial system and public confidence in the system depends on full disclosure of all the facts, within the framework of the rules of evidence."

Finally, the *Record* yielded and gave over the tapes. Would the issue have been essentially different if the reporter's source had been confidential? Should the press be so totally privileged as to be able to withhold evidence crucial to the commission of an alleged murder? An attorney, normally a First Amendment absolutist, said drily, "If the *Record* had retained me, I would have told them that I really don't think this is the kind of case you go to jail for."

There is a corollary question as to how absolute a shield law should be: Should a reporter remain silent and allow a possibly innocent man to be convicted if the reporter has information which might clear the man but which, if revealed, would disclose the confidential source of that information?

Let us suppose, however, that an agreement among journalists could be reached on a very strong, though narrowly qualified, federal shield law. Another problem remains. What is the definition of a "journalist" meriting special privilege under such a statute? And who implements that definition?

If Congress wants to protect journalists, it's going to have to draw some lines. Will someone just starting out as a polemicist—issuing a mimeographed sheet from his home—be protected? If not, what of the argument by Mr. Justice White that the heritage of the free press in this land certainly encompasses "the lonely pamphleteer," who has no less right to liberty than "the large metropolitan publisher who utilizes the latest photocomposition methods"?

*ARE HIGH SCHOOL AND COL*lege journalists to be protected? And what of Mr. Justice White's further point that an academic researcher—as well as just about any kind of author—"may quite accurately assert that he is contributing to the flow of information to the public, that he relies on confidential sources of information, and that these sources will be silenced if he is forced to make disclosures before a grand jury"?

On the other hand, if Congress, as is much more likely, decides to exclude from protection certain classes of self-designated journalists, then the dangerous precedent has been established that government can decide who is and who is not a "legitimate" newsgatherer. And that which government has once decided in this context, it can later change, perhaps according to certain political winds.

I have no ready answers for these conundrums, and would welcome comment from anyone interested in joining me in this quagmire.

Forthcoming in

INQUIRY

- *David Wise on government secrecy*
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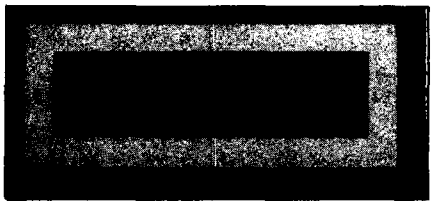

JOEL SPRING

Cranking out competency

"IF YOU CAN TRAIN A pigeon to fly up there and press a button and set off a bomb," James T. Guines, associate superintendent of Washington, D.C., schools, mused to a *Washington Post* reporter last summer, "why can't you teach human beings to behave in an effective and rational way?" Guines was illustrating what he believed were the virtues of the new "competency based education" program introduced last fall into the D.C. school system, where it is being tested in 26 schools. Washington is just one of many places around the country that either have already introduced this new panacea for the problems of education or plan to do so. As Guines told the reporter, "We know we can modify human behavior. We're not scared of that. This is the biggest thing that's happening in education today."

Competency based education is winning wide support among educational bureaucrats (the "we" in Guines's statement). After almost a decade of attempts to achieve more democratic control of the schools through decentralization of school administration, community control efforts, public participation in curriculum development and school advisory groups, competency based education holds out the promise of returning the professional educator to the center of the stage. And a promise is held out also to a public increasingly alarmed as inner-city public schools revert to the state of nature. The promise is that this reform will transform the school into a shiny educational factory, controlled by expert teachers and managers, and manufacturing carefully molded human products for the further purposes of modern society.

Competency based education is almost a religious dogma to those educators who accept Harvard psychologist B. F. Skinner's assumptions about learning. Skinner, who is explicitly cited by Guines, has long felt that all learning is a result of positive reinforcement, or reward consistently associated with a particular behavior. It was on this general principle that Skinner was able to train pigeons to play Ping-Pong in front of college classes. The principle, in some form or other, has, of course, been known for quite some time; it has even been utilized in the classroom to justify the awarding of praise and gold stars. What is different in the current movement is the attempt to control the whole process, "scientifically." (Interestingly, the educators do not seem to be aware of the devastating criticisms leveled at the scientific claims of Skinner's detailed theory by Noam Chomsky and others.)

This reform promises to turn schools into shiny educational factories, molding human products for the further purposes of modern society.

IN COMPETENCY BASED INstruction, each area of learning is broken down and separated into small units. Each small unit is then set up as a specific behavioral objective, and criteria are developed to determine whether or not that objective has been mastered by the student. In some of the early reading programs developed in the late 1960s at the Educational Research and Development Center at the University of Wisconsin, this process sometimes reached absurd proportions when, for example, the general objective of learning the proper handling of a book was reduced to the specific and measurable objectives of keeping the book clean, holding the book right side up, and turning the pages correctly. The teacher was required to keep a record of each student's progress in attaining these objectives. Some programs have been swamped in a sea of small, measurable objectives. One project in Cleveland, sponsored by the federal government to create specific behavioral objectives for a course for the handicapped, required another grant (after completion of the work) to buy a bookcase to hold all the volumes of specific objectives.

The spread of competency based education was supported by the emphasis of the federal government in the early 1970s on educational accountability. Since each objective could be measured, all learning in school could be accounted for and reported to the public. The U.S. commissioner of education under Nixon, Sidney P. Marland, stated in 1972, "Once large objectives have been hammered out, each must be broken into specific and carefully defined subobjectives." Marland had visions of a national accounting firm in education that would keep tabs on the success of schools in achieving objectives. He had a dream that "within our time—perhaps within the next ten years—there could well be a nationwide accounting process or institution which would act like a certified public accountant in business, objectively assessing the success and failure of our schools and reporting the findings to the public. . . ." In addition to the federal government, the United Federation of Teachers in New York, under the leadership of Albert Shanker (who was to become head of the American Federation of Teachers), pledged in 1972 to help "develop objective criteria of accountability."

COMPETENCY BASED EDUcation linked to accountability is also supported because it protects the professional educator from community control. After all, it is primarily the bureaucrats in education who determine the specific behavioral objectives that provide the basis for accountability. Rather than education controlled by the community, it is education controlled by the professional.

The issue of democratic control of education is also important in regard to the content of specific behavioral objectives. One of the most important issues in schooling is what is to be taught to the students. In most places where the new system has been set up, specific objectives are determined by the so-called professional educator or educa-

JOEL SPRING's books include A Primer of Libertarian Education *and* The Sorting Machine: National Educational Policy Since 1945.

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tional bureaucrat. The importance of this becomes evident when one considers controversial subjects like American history or government. Competency based instruction proposes to reduce these subjects to a series of standardized behavioral objectives to be mastered by all students within a school system. Now, in the first place, anyone familiar with the variety of interpretations of history and government has to shudder at the simplistic idea of reducing these subjects to specific behavioral objectives. In the second place it has been concern about the content of subjects of this type that caused differing religious, minority, and political groups in the late 1960s and early 1970s to demand greater control of the schools. Some religious groups charged the schools with teaching a secular religion, minority groups accused the schools of racial and ethnic bias, and political groups argued either that the content of schooling was too liberal or too reactionary. The major target of these protests was the educational bureaucrat, the very person whom competency based instruction invests with central control.

This reversion of authority is illustrated by the school system in Washington, D.C., where, over the course of the current academic year, the school system plans to develop competency based materials for a range of subjects including biology, American history, and foreign languages. The *Washington Post* captured the mechanistic aspects of this new curriculum by quoting Associate Superintendent Guines as saying that "the materials will be standardized, the lessons will be standardized. We're taking the play out. We're taking the guesswork out. We're putting in a precise, predicted treatment that leads to a predicted response."

AS PART OF THE PROGRAM to introduce competency based instruction, Washington School Superintendent Vincent Reed has placed all curriculum-making authority in the central office of instruction headed by Associate Superintendent Guines. This change essentially removes curriculum control from the decentralized school districts that had been created in the late 1960s to give more power to parents and local school administrators. At the same time, however, the decentralized system will be allowed to continue, leaving the form and impression of decentralized control of education without the substance. Associate Superintendent Guines dismisses the whole issue of decentralization as just "a structural manipulation that had nothing to do with what happens to kids in the classroom," thus demonstrating not only lack of awareness of the value of community control, but also blindness to the relationship between who controls the schools and what is taught in them.

Teachers' unions have tended to give strong support to competency based instruction and the trend toward centralization of curriculum development. In the 1960s and 1970s teachers' unions tended to resist the move toward community control of the schools because it represented a direct threat to the rapidly increasing power that the union movement was gaining through collective bargaining. Unions found it easy to bargain with a centralized bureaucratic power, but much more difficult to do so with community or parent controlled schools, where power was diffused. Moreover, both teachers and educational bureaucrats in the central offices of school systems had an interest in protecting their images as professional educators endowed with an indispensable expertise.

In Washington the teachers' union has strongly supported the new curriculum developments and the centralization of control. The local administration has, of course, worked quite closely with the union, calling upon its representatives to help draw up the new curriculum. The Washington school system proudly boasts that it has used few outside consultants; the new curriculum is a product of the work of the bureaucrats in the central office and the teachers' union.

NOW, IT SHOULD BE RECOGNIZED that competency based instruction is a perfectly logical, and in many cases a successful, way of teaching certain basic skills. It becomes a problem when it is adopted as the major method of instruction and is used to centralize control of the curriculum. By promoting the image of the professional educator as a technological magician who can gain complete and precise control over the learning of all students in a school district, competency based instruction renders ineffectual any attempts at community control. There will always be sharp disagreement as to whose political, economic, and social philosophy will be allowed through the classroom doors. Pseudoscientifically determined behavioral objectives cannot resolve this conflict.

Finally, it should be observed that not only the technique, but also the spirit of B. F. Skinner is evident in the new movement. Skinner's books, especially *Walden* II and *Beyond Freedom and Dignity*, are famous for their blunt expression of the essential meaninglessness of the concept of freedom, and, indeed, of most traditional humanistic values. It does not seem too farfetched to detect an echo of that view in Associate Superintendent Guines's statement to the *Post*: "All these [reformers] used to say, 'God made this child, and there should be a natural unfolding of his capabilities.' That's a bunch of crap. God may have made children, but without the help of people they will never develop. Society is demanding that our students be a certain way."

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The hypocrisy of the administration's policy points up the crisis of liberal internationalism.

CARTER'S YEAR OF HUMAN RIGHTS

By EARL C. RAVENAL

THE HUMANE NOISES EMANATING from the Carter administration this last year never amounted to a human rights policy. The year that began with such brave flourishes as the president's letter of support to the Soviet dissident physicist Andrei Sakharov has ended in muted mutterings and a few *pro forma* jibes by Ambassador Arthur Goldberg at the Belgrade conference, which has wound down unmarked—perhaps mercifully—by notable confrontation. Even President Carter's speech at Notre Dame on May 22 ("A Foreign Policy Based on America's Essential Character") proves to have been the high-water mark, not the launching pad, of the "commitment to human rights as a fundamental tenet of our foreign policy."

If the United States looked a bit naked at Belgrade, the truth is that, like the fabled emperor, it is missing some essential articles of clothing, particularly some of the philosophical undergarments. At least part of the trouble with this administration's defective stance is a matter of philosophy: It doesn't know what "policy" is or implies. It seems to think that a policy is a list of nice things it would like to happen. But policy is not what you'd like to do, but what you're likely to do. No one really knows what you want until you make clear what you are willing to pay for it.

In these terms, Carter's "commitment" to human rights never became an actual policy because several essential things never occurred. First, the administration has not been willing to accept the consequences of what it says and what it does. Second, it has not applied human rights consistently as a criterion of its actions. And third, it has not measured its actions against the hard cases, not the easy ones—the countries that "matter," the ones we think we need, not the ones that need us because they have no other place to go (an increasingly short list, in any case, these days). Hard cases may make uncomfortable policy choices, but unless we address them, there will be no policy at all. At best, therefore, we have not had a human rights policy—just a few bones of human rights to flavor other policy soups: arms transfer, development assistance, alliance, troop deployment, SALT, whatever.

In fact, this adminstration never thought much about why we should have a human rights policy at all. Are we concerned about outcomes, about improving the situation of people in other countries, even if this involves compromising principle to maintain our influence, our "leverage"? Or are human rights a matter of principle, because we simply can't live with ourselves as a political community if we deal on intimate terms with oppressive governments. To be fair, Secretary of State Cyrus Vance touched on this point—but only glancingly—in his Law Day address in Georgia on April 30. He asked: "Does our sense of values and decency demand that we speak out or take action anyway, even though there is only a remote chance of making our influence felt?" But he qualified and confused the point when he continued: "Will our action . . . actually improve the specific conditions at hand? Or will it be likely to make things worse instead?"

Another way of putting the dilemma is that this administration doesn't know whether it wants to *be* good or *do* good. This distinction—between principle and consequence—is a familiar one in ethical theory. But more importantly, it is significant in the real world because it makes a difference in our behavior. Principle and consequence may conflict. That is the crisis of modern liberal internationalism, and the foundering of Carter's human rights "policy" is just the latest example.

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If we are serious about the principle of human rights, we have to expect some rather nasty policy consequences.

TO FIND THE SOURCE OF THE PRESent administration's actions, you have to go way back beyond the Democratic presidencies of the 1960s, to Woodrow Wilson and the mystic marriage of active moralizing and strategic control, the "necessity" of implementing our own social contract by "making the world safe for democracy." According to Wilson, by strewing democratic values around the world we would somehow profit, abroad as well as at home. There would be no hard choices. But instead of reaping the benefits of this grand convergence of principles and consequences, today we are confronted by the Wilsonian paradoxes: saving other countries in spite of themselves; sometimes destroying them in order to save them; and eventually destroying ourselves to save our own souls. Reflection on them should be an antidote to this administration's newfound confidence in our global purposes, to its fatuous optimism about our historic mission. The painful point is that, to have a consistent human rights policy, we must be indifferent to some outcomes, particularly strategic outcomes; and the Carter administration, and a lot of other people, are clearly not able to bring themselves to that.

In other words, if we are serious about the principle of human rights, we have to expect some nasty policy consequences. Our strict adherence to human rights criteria will alienate some offending governments and cause them to escape from American control, to free themselves from that ubiquitous "leverage" we have been exerting for 30 years. Such governments may hedge against our support, even make accommodations with our adversaries. They may sever such strategic connections as bases, military aid, or joint planning and exercises. Early in the human rights game, Brazil, Argentina, Ethiopia, and the Philippines did, or threatened to do, some of these things. Nations might become less cooperative in other areas, from arms control and nuclear nonproliferation to the law of the sea, and "world order" may suffer. The most ironic effect of all is that some nations might even tighten the screws on internal political dissidence—the kind of repression that our policy might have been intended to lighten. The Soviets did just that, in response to Jimmy Carter's early verbal assaults and symbolic receptions of Soviet exiles.

But it was idle ever to worry about this administration's adhering stubbornly to principle. Rather, from the first, the administration began to fight against the implications of its own rhetoric—in particular, to lobby in Congress against human rights amendments attached to foreign aid legislation. It was concerned, for the most part, with minimizing the consequences of its initiatives and salvaging strategic assets around the world.

If you want to get early seismic readings of a "policy" from speeches like Carter's at Notre Dame or Vance's on Law Day, don't listen to the words of promise; look for the qualifications, the reservations, the cop-out hatches. For example, Vance warned against "hubristic attempts," "mechanistic formulas," and "automatic answers." Jimmy Carter wanted to avoid "rigid moral maxims" and appreciate "the limits of moral suasion."

And at the first sign that Congress would insist on enforcing human rights, administration apparatchiks trooped up to the Hill, pleading for "flexibility." Before very long, it seemed that the only true supporters of human rights were those who opposed the administration, and the only friends the administration had left were those who never took its promises seriously in the first place. All of this was pretty familiar stuff to connoisseurs of the last couple of administrations—except that the Carter administration had one new line for members of Congress who wanted to put binding restrictions on the president's propensity to support odious clients: Don't you see, we're your guys now; you don't have to control *us*.

Meanwhile, back at the State Department, Secretary Vance and the old (and new) diplomatic hands fell back easily on the bland bureaucratic dodge of "case by case" judgment. As Vance put it: "Our country can only achieve our objectives if we shape what we do to the case at hand." Somewhat like patriotism, case-by-case judgment is the last refuge of policy-makers. On the face of it, it is a sound, responsible prescription for policy-making. But actually it is an early warning of an intent to evade principle. Case-by-case judgment also begs all the essential questions: Of course we decide cases one by one, simply because that's how they come to our desks; and of course there are differences among countries and situations. But how do we decide the cases? Why do we decide some this way and some the other way? And do those "differences" make a difference?

LIKE ALL ITS PREDECESSORS, THIS administration has used "flexibility" to carve out large areas of exceptions from the application of human rights criteria. First, it has accommodated our own claims of "necessity," and sometimes just convenience. To wean them from the Soviets, it courted Vietnam for a while and then started on Cuba. To maintain global balance and keep up pressure on the Russians, it has cultivated China, seeing, hearing, and speaking no evil about that country's harsh system. For the sake of détente and strategic arms control, it has mitigated its attacks on the Soviet Union, confining them to confidential nudges through "private channels." For the continuing use of our air and naval bases, it has largely ignored Marcos's repressive rule in the Philippines. To discourage aggression from North Korea, it has pointedly spared South Korea from American sanctions. For moderation in oil pricing, balance of payments, and regional stability, it has flattered and exempted the shah of Iran, overlooking his torture chambers and the long reach of his secret police. For the sake of who knows what, it has turned its back on Indonesia's concentration camps and genocidal repression of the independence movement in East

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Timor. The list goes on: Nicaragua, Zaire, Chile, Argentina, South Africa.

Second, the administration seems inclined to make exceptions for *other* countries' claims of "necessity," external or internal. The trouble here is that the "threats" to other regimes are real, not entirely figments of paranoid imaginations. No regime in the modern world—possibly even Idi Amin's—murders, kidnaps, imprisons, and tortures for the sheer pleasure of it (though individual agents might be appropriately enthusiastic in their work). Of course, to a large extent these "threats" are self-inflicted: pent-up reactions to repression of internal opposition and aggression against neighboring countries. But that's only to say that at some point the circle is joined and imagined threats become quite palpable. By now, these rulers have real enemies who are trying to overthrow them and kill them. So virtually all regimes have a plausible claim of "necessity." But does that mean that we must honor these claims?

The trouble with exceptions is that they don't prove the rule; they become the rule. At the very least, this exception-mongering signals the real concerns of our government. Other nations soon learn how to read us. They know which buttons to push and which levers to pull to move or deflect us; and these are "national security" buttons, not real human-rights levers. True, the United States has slapped some wrists by deferring loans or abstaining on notes in international bodies; and in return some clients have released a few political prisoners, relaxed martial law, or, in the words of Richard Barnet, changed the initials of the secret police force. But these have been, on both sides, the merest tokenism or the most obvious sleight of hand.

The administration's flexible approach has degenerated into hypocrisy, and its attempted policy has remained just noise.

WHAT IS THE REMEDY? IF WE wanted a real human-rights policy, what would it look like? How could we structure it? As in most enterprises, there is a Scylla and a Charybdis on either side of a rather narrow strait. Exclusive devotion to principle could lead to our diplomatic isolation, and even, in the end, to an "autistic" national behavior in the world. On the other hand, case-by-case concern for consequences, bending to circumstances and tolerating appeals to "necessity," could lead to institutionalized hypocrisy, mystifying all audiences and bringing policy into disrepute at home and abroad. How, then, should we draw the lines?

At best, speaking out against human rights violations is a kind of luxury that our system allows us. Words are fine, but they don't quite add up to "action," despite Carter's self-serving tautology at Notre Dame ("in the life of the human spirit, words are action . . ."). Of course, private expressions should not only be tolerated but encouraged; they should never fall into the shadow of official censorship. Discordant voices within government—Andrew Young's, for example—should not be discouraged, even if they make our policy process seem a bit chaotic to foreigners. After 200 years, other countries should be getting used to our political system. In its best moments, it is uncoordinated, because it is based not just on a separation but on a tension of powers, even within the executive branch. It was intended that way by its founders; they would be happy to see that it still works—although some of their successors yearn for "consensus" and policy regimentation. But, having said that, let's be clear that speaking out is not a very effective exercise. What then are some of the more substantial specifications for a human rights policy?

There might be an upper limit on our treatment of governments whose practices do not square with our moral sensibilities—things we should not do, no matter what. We have to learn to distinguish between positive sanctions, in the sense of interventionist acts—armed force, covert action, interfering with other governments on their own ground—and negative sanctions—what we should stop doing, what instruments of help and support to deny—and avoid the interventionist sanctions. The world is getting too tight for those kinds of things. (And while we're at it, let's drop the rather bald sophism that nonintervention is just as interventionist as intervention. This curious equation, which has been perpetrated by the deans of American political theory, was never more than the captive academic's benediction of the disgraceful acts of our government. Besides, most people can see the difference.)

There could also be a lower limit—things we continue to do, no matter what. These would be a base line of official contacts—recognition, diplomatic representation—that would not be breached or manipulated or made conditional on another government's performance, regardless of almost anything except conceivably a state of war. With regard to recognition, we should move to a completely de facto policy, relying on such standard tests as control of territory and population, however repressive this might be. Diplomatic representation also should not swing on our approval of the character of the regime, even though we can, I suppose, find ways of distinguishing between a "cold handshake" and a "warm embrace." And private commercial and social relations should be largely exempt from government interference. But here a different principle is at stake: not concern for the fate of others abroad but respect for the autonomy of our own private sector within its legitimate sphere of operation. Decisions to do business in other countries, with other social systems and other ethical practices and norms, are for directors and stockholders. Our government should neither support them nor bail them out of their incompetence or improvidence. It may be, for example, that South Africa will soon be a risky business environment, and companies will have to reckon with that. But our government should respect their right to stay and fail. The advantage of such a policy is that the presence of American business in other countries would not create the implication of official support. But conversely, American business abroad would not be made

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the implement of official displeasure.

Between these upper and lower limits, there is a large area for the application of a consistent, even severe, approach, one that will command the respect, though not always the gratitude, of other nations and peoples. If we are serious about human rights, we must deny miscreant governments the benefits of the resources and sacrifices that our government has to exact from individual citizens in the first place. *Particularly* in the area of our foreign relations, our government shouldn't dispose of the resources of its people in ways that they, as individuals, wouldn't. That means denying military assistance—grant aid, supporting assistance, and concessive credit—as well as economic aid. It also means instructing our representatives in international lending institutions to vote against loans to such governments, as the Harkin Amendment and related legislation in the Senate would have us do. (The Harkin Amendment was finally passed in 1977, over administration objections.)

The more severely we act against nations that violate human rights, however, the more tightly we must define the violations. Precisely because our policy should be rigorous and consistent, we must be all the more careful in our definition of the conditions that will trigger our actions. We should keep the list short. In my view, it should be confined to gross outrages to human sensibilities. Summary execution and indiscriminate mass murder are certainly within this circle of definition. So is torture. Abduction and prolonged incarceration under subhuman conditions should also be included.

That is where and how the line should be drawn in our official dealings with foreign elites: no aid, no diplomatic support, no military commitments to the murderers, torturers, kidnappers, and jailers.

> *Other nations soon learn how to read us: They know which buttons to push and which levers to pull to deflect us.*

BUT AS FOR THE SECOND AND THIRD items of the trilogy of life, liberty, and the pursuit of happiness, they do handsomely as reasons for a Declaration of Independence, but not so well as guidance for international relations. Our response to authoritarian rule as such need not be absolutely mandatory and exclusive. This doesn't imply that we shouldn't also disdain and condemn the repression of dissidence, the disfranchisement of competing political conceptions, the control of the media, the restriction of emigration, the denial of equal rights to certain groups or categories of people. We may well want to regulate our relations with authoritarian governments to take cognizance of their suppression of political freedoms. But these kinds of abuses are less repulsive than state-sponsored murder, torture, kidnapping, and brutal confinement. Even less should we confuse with major abuses those situations where a government simply presides over an economy and a society characterized by less welfare or greater disparity in living standards than we would approve.

These guiding principles would lead to a policy that is coherent and extensive. But we have to realize that it would not cure the problem of human rights in other countries. That is precisely the point about a human rights policy. If we hate certain crimes, it is as important that we not participate in them as that they are not committed. Though more than just words, a human rights policy is still a form of political expression. That is not to denigrate it—quite the contrary. It isn't *just* symbolism, a sop to our consciences. Political expression is a matter of the highest moral and constitutional importance. It defines the kind of nation we are, the kind of commitment we make to *ourselves*.

OBJECTIONS TO CARTER'S HUMAN rights efforts have come from several quite different sources. The pundits, those who would pursue all our foreign relations in the spirit of "the national interest," fear that human rights is too quixotic a standard, that it is too general, too binding on the decisions of state. Others have the opposite fear: that this administration has prepared too many escape hatches for itself, that too many odious acts and relationships will be laundered in the familiar policy detergent of "national security." Yet another criticism derives from the fear that human rights, enforced selectively against Communist countries, is a new banner under which the idealistic Cold Warriors from the 1950s have enlisted. There were subliminal suggestions of this in the Notre Dame speech—not surprisingly, given its origin. If so, the pursuit of human rights could be worse than a charade; it could become a disaster.

I admit to being one of those who would like American foreign policy to be governed by moral criteria and directed to moral ends. I don't mean moral expansionism, but precisely the opposite: the rigorous application of self-restraint. And I mean restraint that grows directly and clearly out of the simple values of individual citizens.

This is not a matter of making a quick speculative profit by condemning the *Realpolitik* of the immediately preceding administration. We had a bit too much of that shallow and disingenuous brand of criticism during the last presidential campaign. Amorality did not begin with Kissinger. The point runs deeper: After the depredations of three decades of "realist" political ethics and Cold War statecraft (the famous Niebuhrian double standard, "moral man, immoral society"), there is a need to restore a single moral standard that is comprehensible to the individual and apply it with understandable consistency to the conduct of the state.

When it comes to human rights, the very essence of what we should be doing is to draw a firm, straight line—a constraint—across all our diplomatic relations, and accept the consequences. By avoiding this approach, the Carter administration has not created a flexible, pragmatic human-rights policy. Rather, the administration's flexibility has degenerated into hypocrisy, and its attempted policy has remained just noise. ❑

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BRITAIN'S ATTACK ON CIVIL LIBERTIES

Not their finest hour

By Jonathan Marshall

GREAT BRITAIN, HOME OF the Magna Carta, the Petition of Right, and Hyde Park corner, today faces serious challenges to its liberties. Britain has neither a written constitution nor judicial restraints on political power, and the British have survived as a free people only through enshrining in tradition a tolerance and liberal spirit that developed after bitter experience in civil war and religious conflict.

Today, the liberties of the British people are under attack by the government, and the organized friends of those liberties are finding that their defense is becoming increasingly difficult.

Britain's most vigilant civil liberties watchdog, the National Council for Civil Liberties, was founded in 1934 by E. M. Forster, Bertrand Russell, H. G. Wells, and other famous figures. Its original purpose was defense of the rights of hunger marchers to free assembly. During World War II, it fought the vast extension of government authority sanctioned by the Emergency Powers Bill—the sort of fight that (then, as now) wins the NCCL few friends in government but wide respect among the informed citizenry. Over the years, in line with its original statement of purpose, the NCCL has worked "to assist in the maintenance of the hard-won rights of citizens—especially freedom of speech, press, and assembly—from all infringement by executive or judicial authority. . . ." This struggle has led the NCCL to defend the rights of mental patients, women, prisoners, journalists, immigrants, and gypsies.

Most members of the Parliamentary Civil Liberties Group (which contains about one-fourth of all MPs) also belong to NCCL, which draws its support from all parties, especially the Liberals and Labour. The NCCL worked closely with members of the Conservative Party to fight government efforts to seize the passports of British mercenaries who fought in Angola. But NCCL's grass-roots support is depressingly small (although not bad by the standards of other British political groups)—only 5000 dues-paying members. Still this is impressive for England, where, explains Martin Kettle of the NCCL, "there is much less tradition of popular mobilization around civil liberties issues" than there is in America.

One of NCCL's biggest priorities is the fight to protect the individual from intrusion by the government and industry. Not that the issue is new; the NCCL fought vigorously after World War II to prevent McCarthyite investigations and purges of the civil service, prompted by spy scares. But the increased use of computers, electronic bugging devices, and private detective agencies led the NCCL to launch a major privacy campaign to coincide with the 1968 Human Rights Year. "They know too much about us, and we don't know enough about them," is the assumption the NCCL works under. The threats to privacy have been many, from the revelation in 1961 that some 10,000 government officials had the right to enter

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private homes without a warrant, to Home Office plans (in 1966) to fingerprint the entire population, to the extremely controversial 1971 census which compiled personal information of unprecedented scope on all British citizens, some of which was leaked to private organizations.

But NCCL has won some victories. It successfully prevented, for instance, extension of the investigative powers of Britain's tax collectors. More recently, with help from the British Computer Society, the NCCL convinced the government to establish a Data Protection Committee, whose recommendations will almost certainly produce reforms in the way data banks are maintained and used in the public and private sectors. But major privacy problems remain: the continued use of police photographers at demonstrations, the maintenance by security agencies of files on trade union leaders, inadequate confidentiality of criminal records, and use of the Prevention of Terrorism Act to detain well over 2000 people for questioning and identification.

*THE GOVERNMENT'S SYS*tem of immigration control particularly abuses the right to privacy of would-be immigrants, who are subjected to intense and intimate probing into their personal lives. But the immigration and nationality laws are a whole problem in themselves, and have become one of NCCL's chief targets, especially since the Wilson government in the 1960s, with James Callaghan as home secretary, deprived thousands of Asian and African holders of UK passports of their right to settle in Britain. The 1968 Commonwealth Immigration Act in particular blocked the entry of desperate Asians forced out of Kenya for holding UK passports. "So began the infamous shuttlecock system," as journalist Barry Cox describes it, "in which hapless airlines were forced to fly families and individuals round and round the world while Britain, the only country which ultimately could accept them, coldly calculated the deterrent effect of this on those thousands in East Africa. . . ." The growth of racist agitation against recent immigrants, reflected in rising support for the National Front, has stymied immigration reform. But the NCCL has had at least one victory; in 1974, after a national campaign by the NCCL and immigrant and women's organizations, the government finally agreed to permit foreign husbands to join their British wives.

Britain's equivocal record on privacy and immigration reflects the rights situation in the country as a whole. In its last annual report, the NCCL observed that despite some "small steps" forward, the general cause of civil liberties in Britain had "retreated several paces." Perhaps the biggest setbacks of the last year have involved press freedom. Britain's newspapers (with the exception of the *Sunday Times*) have never displayed much of a crusading spirit, and have faced numerous obstacles besides: the daunting Official Secrets Act, which discourages inquiry into any government secrets; the government's use of "D" (defense) notices for prior censorship in areas of national security; incredibly strict libel laws, which protect even the most public of figures; and intimidating contempt-of-court rules, which blot out public discussion of matters *sub judice*. In a country with no constitutionally entrenched rights like those in America's Bill of Rights, the potential for abuse is obviously enormous. Two cases of abuse in the past year have particularly worried the NCCL's watchdogs: the Agee-Hosenball case (and its offshoots), and the prosecution for "blasphemous libel" of the small paper *Gay News*.

WHERE RIGHTS ARE NOT ENTRENCHED AS ARE THOSE IN AMERICA'S BILL OF RIGHTS, THE POTENTIAL FOR ABUSE IS OBVIOUSLY ENORMOUS.

The Agee-Hosenball case, although it has been widely publicized, deserves further mention because of its implications for the rights of future critics of the CIA (and its allied intelligence agencies) and of government secrecy in general. The British government's disrespect for due process in the case must also be particularly disturbing for the three men—all supporters of the Agee-Hosenball defense committee—who have since been charged with serious violations of the Official Secrets Act.

LAST YEAR, THE BRITISH Home Office under Merlyn Rees ordered the deportation of Philip Agee, the former CIA operative who has put forth a continuing stream of damaging revelations about CIA activities overseas, and Mark Hosenball, a fellow CIA-critic and reporter for the mass circulation (London) *Evening Standard*. A Home Office spokesman said only that the government had received "information" that Agee had "maintained regular contacts harmful to the security of the United Kingdom with foreign intelligence officers," and that Hosenball had prejudiced "the safety of servants of the Crown" through his writings. Agee, of course, suspects that the CIA (represented in London by a new station chief, Dr. Edward Proctor) pressured the English security services to remove Agee from his base of operations. MI5, Britain's counterespionage agency, may also have been annoyed by Agee's anti-CIA campaign in Jamaica, a commonwealth country. Hosenball, on the other hand, was convinced that his case "undoubtedly hinges on some story I did in my capacity as a journalist for *Time Out* magazine," a trendy London weekly arts and entertainment review, which occasionally publishes leftist political articles. Hosenball published in *Time Out* a list of the entire staff of the CIA station in London, and a description of the Government Communications Headquarters at Cheltenham, the British equivalent of the National Security Agency. Hosenball believed this latter article (although compiled entirely from such public sources as telephone books and newspaper cuttings) led to his deportation; on the other hand, the usually reliable Bernard Nossiter learned from sources close to British intelligence that the Home Office may have objected more to another article he wrote, linking two former student leaders to the Secret Intelligence Service. Actually, no one outside the British government knows for sure what the exact nature of the charges were against the two men.

The Home Office was permitted to operate in such secrecy thanks to a hitherto unused section of the 1971 Immigration Act, which gave Rees as home secretary the right to deport any

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noncitizen at all for reasons he "deems . . . to be conducive to the public good," either on grounds of security "or for any other reasons of a political nature." Back in 1971, Rees had agreed with Labour heavyweight Roy Jenkins that in the hands of a ruthless or energetic home secretary "the procedure could be used most dangerously and most damagingly. It is a totally unacceptable provision as it stands." By 1976, Rees, now home secretary himself, found the provision most useful.

As a concession, Rees delegated a three-man advisory panel, made up of retired government officials—all knights—to review "sanitized" dossiers on Agee and Hosenball, listen to their defense, and advise Rees in secret on the wisdom of the deportation order. The catch, of course, was that the defendants had no idea of what defense to make—save recounting and justifying their entire life history. Rees refused even to brief the Parliament on the case, insisting that he was "not prepared to go into greater detail" than that contained in the brief statements of the official spokesman for the Home Office.

ALL OF THIS STRUCK SOME Englishmen as a kangaroo-court procedure, bearing no relation to the standards of due process usually required under Anglo-American law and the European human rights conventions to which Britain is a signatory. One frustrated *Guardian* reader, announcing his intention to boycott the Labour Party in future elections, asked, "If we are to be governed in the manner of a third-rate banana republic, why bother to vote for a choice of fourth-rate petty tyrants?"

The Agee-Hosenball Defense Committee won the support of about 150 MPs, mostly in the Labour Party, a wide variety of trade unions, the National Council for Civil Liberties (which helped in their defense), and the National Union of Journalists, whose deputy secretary, Charles Harkness, called the deportation "an attack in the crudest form on the freedom of the press."

Even so, the media—and not just the right-wing *Daily Telegraph* —displayed a deplorable toleration for the government's action. The *Times* predictably chose to defend the prerogatives of the government (even if it is a Labour government) against any claims of individual rights; it called Rees's handling of the affair "reasonable." "Nations have a right," its editorial said, "to tilt the balance of doubt in their favor when it is believed that their own security is being jeopardized by aliens on their soil." That marvelously vague phrase "it is believed" glosses over the central issue in the case: Who is to determine what constitutes a threat to "national security," and on what basis and according to what criteria? The *Times* apparently sees few problems here. But then, that venerable London paper also deplores attempts in America to limit the CIA in the wake of disclosures about drug testing, domestic spying, and assassination.

> *WHO IS TO DETERMINE WHAT IS A THREAT TO "NATIONAL SECURITY," AND ON WHAT BASIS AND ACCORDING TO WHAT CRITERIA?*

As everyone knows, Rees went ahead with his decision to deport Agee and Hosenball, whatever the decision of the advisory panel (whose recommendation remains secret). But the government's crackdown on journalists who have the temerity to ask questions about the activities of intelligence agencies continues, thanks in part to the relative mildness of public opposition to the Agee-Hosenball deportations.

When free-lance writer Duncan Campbell, co-author with Hosenball of the article on the Government Communications Headquarters and a frequent contributor to *New Scientist* on communications technology, boasted in *Time Out* of the ease with which he and other journalists compiled information on the British security services from the public record, the government decided to call a halt to this dangerous outbreak of investigative journalism, a relatively uncommon disease in Britain. On February 18, Special Branch officers, apparently on the basis of extensive electronic surveillance, arrested Campbell and two fellow supporters of the Agee-Hosenball defense committee: Crispin Aubrey, another *Time Out* reporter; and John Berry, who some seven years ago left the British signal corps as a corporal. Police held them incommunicado for 44 hours, during interrogation, before granting them access to a lawyer and informing them that they were suspected of violating the Official Secrets Act. (This kind of intimidation is permitted by the Magistrates rules governing police conduct, which deny defendants the right to a lawyer if "hindrance is likely to be caused to the process of investigation or the administration of justice.")

While the three were initially being held, the police ransacked their homes and the homes of several of their friends. They absolutely stripped Duncan Campbell's flat, taking with them everything from paperback novels to telephone directories; the list of items removed covers four pages. Most important, the police took all the notes and technical materials he needs as a working journalist, thus depriving him of his livelihood. Aubrey, Campbell, and friends have been followed by unmarked police cars, sometimes two at a time. The telephone lines of *Time Out* and the National Council for Civil Liberties have been tapped. And recently the government has quietly confirmed allegations, which it denied in previous Parliamentary debate, that the offices and cars of defense committee members have been burgled and ransacked for papers. "It is beginning to appear that journalism is becoming a high-risk occupation in this country," observes Ron Knowles of the National Union of Journalists. "The arrests are an attack, not only on investigative journalism, but also on the thousands of people who support Agee and Hosenball."

THE OFFICIAL SECRETS Act, under which the three men will be tried, was until recently thought to be nearly defunct. Passed into law in only 30 minutes, on a hot August afternoon in 1911, in the midst of a German spy scare, the act contains notoriously broad provisions. It assigns criminal penalties to those who improperly pass or receive "official secrets"; but such secrets are so broadly defined that in the words of one government official, "It is an official secret if it is in an official file." In 1972, for example, the Conser-

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vative government nearly pressed charges against the *Railway Gazette* simply for publishing plans for railway cutbacks.

In 1970, the government lost its prosecution of the *Sunday Telegraph* for publishing a Foreign Office document on the Biafran war. Justice Caulfield concluded the trial with the remark, "The case if it does nothing more may well alert those who govern us at least to consider . . . whether Section 2 of this Act has reached retirement age and should be pensioned off." In 1972, a committee to investigate the act, of which Merlyn Rees was a member, recommended repeal of Section 2, calling it a "mess" and "enormously wide." The Labour Party has since pledged to follow that recommendation. Last November, Rees promised to replace the Section 2 "blunderbuss" with "an Armalite rifle," a proposal that worries many civil libertarians because it may simply make the act a more effective weapon. NCCL's Martin Kettle, for one, thinks it "extremely likely that revision of the Official Secrets Act would simply make it a tighter and more effective law." So far, however, bureaucratic opposition to *any* narrowing of the law has stymied reform attempts.

Last summer, perhaps in recognition of previous failures to win prosecutions under the vague provisions of Section 2, the crown withdrew the charges it had brought under that section. Instead it accused the three men of the graver offense of violating Section 1—which customarily applies to foreign spies and carries penalties of up to 14 years in prison.

In this case, however, the prosecution does not claim that Campbell was working for a foreign power, but maintains that "he was thoroughly subversive, and prepared to publish information which was secret." The prosecution's star witness, "Colonel B," said that "there should not be any public discussion of Britain's SIGNIT (Signals Intelligence) at all," and that even the regulations governing the handling of the secret material had to be kept secret. The security-conscious colonel was not aware of articles on SIGNIT that have appeared in the *New York Times*, the *New York Review of Books*, and *Ramparts*, but he did think it would be a breach of security for a former member of SIGNIT to tell a friend, "I think too much money is spent on SIGNIT."

Sadly, public protest over the "ABC" (Aubrey-Berry-Campbell) case has been even more muted than in the Agee case. The National Council for Civil Liberties warned that the arrests "will disgrace this Government at home and abroad," and charged that "the Labour Government will harass and intimidate any journalist who attempts to investigate matters which the Government wants hidden." The National Union of Journalists has also taken a stand. But the government has effectively suppressed criticism through the *sub judice* rule, which prevents even MPs from speaking out, under threat of contempt of court, on the substance of the case. (Such gagging of public discussion was not possible in the Agee case, which did not come before the courts.) The same rule prevents the press from learning the exact nature of the charges—or the defense in the "ABC" case. As Bernard Nossiter observes, "The meshing of Official Secrets with *sub judice* creates a wondrous official machine to preserve intelligence agencies from scrutiny."

BUREAUCRATS WIELD A FORMIDABLE ARRAY OF WEAPONS TO STIFLE INQUIRIES INTO THE OPERATION OF STATE POWER.

Americans have learned how a wall of government secrecy, under the guise of "national security," breeds extraordinary abuses by such agencies as the CIA, FBI, IRS, and Drug Enforcement Administration. But whereas in America congressional investigations, the Freedom of Information Act, and a strong tradition of investigative reporting have limited these abuses through exposure, in England the bureaucracy still wields its formidable array of legal weapons to stifle any independent inquiries into the operation of state power. In particular, through the Agee-Hosenball deportations and the "ABC" prosecutions, the intelligence bureaucracy has served notice that embarrassing disclosures of its misdeeds will be crushed—highlighting the precarious state of fundamental civil liberties in England.

IN THESE SECURITY CASES, the government abrogated fundamental freedoms to protect its operations. But in another recent and important case, which has drawn the close attention of the National Council for Civil Liberties, the government brought charges against a newspaper simply for potentially offending the sensibilities of a fraction of the population.

The *Gay News* case concerns that paper's publication of a poem, "The Love That Dares to Speak Its Name," written by Professor James Kirkup. On a literal level, the poem describes the reaction of a homosexual Roman centurion to the crucifixion, and describes Christ's homosexual orgies with such partners as Judas and groups of King Herod's guards. Britain's own Anita Bryant, the devout Christian morals guardian Mary Whitehouse, leader of a 13-year crusade against pornography and licentiousness in the media (she succeeded in banning *Deep Throat* from Britain), learned of the poem from an outraged reader and brought suit against *Gay News*, and its editor Denis Lemon, for blasphemous libel, an ancient law last invoked in 1921 when John William Gott received nine months at hard labor for comparing Christ to a circus clown.

Mrs. Whitehouse brought the suit only after winning the assent of a high court judge in chambers, at which time the crown formally took over the case as *Regina* v. *Gay News and Lemon*. The prosecution charged that the defendants had "unlawfully and wickedly caused to be published a blasphemous article concerning the Christian religion, namely an obscene poem which villified Christ in his crucifixion." It described certain passages in the poem as "so vile that it would be hard for even the most perverted imagination to conjure up anything worse." Calling this incident "a thousand times worse" than that for which Gott was convicted, the prosecution called on the jury "to set standards for the last half of the twentieth century"—suggesting the importance that some self-appointed defenders of morality have placed on the case.

But just what is "blasphemous libel"? Judge King-Hamilton, in this case, defined it as writing about God,

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Christ, or any other sacred subject in terms "so scurrilous or abusive or offensive that if they are published they would tend to villify the Christian religion and tend to lead to a breach of the peace." The judge ruled, on the basis of nineteenth century precedents, that actual intent was irrelevant; since no one alleged that the poem had in fact led to a "breach of peace," the only question was one of "tendency." According to the judge, tendency to lead to a breach of the peace "means that the words are apt, inclined to provoke or arouse angry feelings." He asked the jury to consider the poem on these terms: "Is the poem obscene? Could it hurt, shock or appall? If you had written it, would you be proud or ashamed? If you read it to an audience of fellow Christians, could you do it without blushing?" That law is indeed strict which makes blushing a test of crime.

The jury heard no testimony on theology or literary criticism to guide their appraisal of the poem; the judge simply asked them, as representatives of the British public, whether the poem appalled them. Ten out of 12 jurors were sufficiently appalled to convict. Praising the jury's "moral courage" on hearing this verdict, the judge offered his opinion that the poem showed "a reckless disregard for the feelings of Christians," and that he hoped "never to see the like of it again." He ordered national newspapers not to print it, fined *Gay News* £1000, and gave its editor, Denis Lemon, a nine-month suspended prison sentence and a £500 fine. King-Hamilton cautiously expressed optimism that "by this verdict the pendulum of public opinion is beginning to swing back to a more healthy climate." Mrs. Whitehouse was more exultant. "It's been a great day for the country," she said, "a line has at last been drawn and a limit set." She called the case "a turning point in our campaign to defend the basic structures of Western civilization."

The importance of the case, of course, lies less in the vindictiveness of the judge or the crusading moralism of Mary Whitehouse than in the fact that such laws remain on the books, and are still the basis for crown prosecutions. As one of Lemon's supporters put it, "The fact that such a case could come to court at the end of the twentieth century is itself a step backward." For as Nicholas Walter, editor of the *New Humanist,* observed in a letter to the *Times*, "The present law, exploited as enthusiastically as it has been by Mrs. Whitehouse, interpreted as unrealistically as it has been by Justice King-Hamilton, and accepted as obediently as it has been by an Old Bailey jury . . . could be used to suppress any religious controversy."

The *Gay News* case predictably drew angry comment from the National Council for Civil Liberties, which condemned the verdict as "a dangerous new form of censorship." "It may offend members of the Christian religion," said an NCCL spokesman, "but should that make it illegal?" The Campaign for Homosexual Equality called the revival of the blasphemy law "one further step to totalitarian values." And a small group of journalists has recently formed a Committee Against the Blasphemy Law to challenge what they see as "a living threat to freedom of expression in religious matters."

> *THE JUDGE ASKED THE JURY, "IF YOU HAD TO READ THIS POEM TO AN AUDIENCE OF FELLOW CHRISTIANS, COULD YOU DO IT WITHOUT BLUSHING?"*

REGRETTABLY, HOWEVER, few people in England appear to recognize the importance of the case to questions of civil liberties. Reporters sympathetic to the *Gay News* side, such as the *Guardian*'s Nicholas de Jongh, tend to treat the case in a legalistic way, following arguments of the defense team that on a symbolic level the poem was really "sincere and legitimate Christian speculation" and not blasphemy at all. Because the law cannot be challenged on constitutional grounds, the defense has had to mount such a strained case rather than challenge the whole concept of a blasphemous libel law.

On the other hand, it is sad to see the liberal *Guardian* objecting to the verdict primarily because the prosecution gathered insufficient expert theological testimony to prove the poem was blasphemous. The *Guardian* finds it "understandable and probably desirable" that efforts be made to protect Christianity from being "exposed to flippant or moddish detraction." The paper admits that "the author may have been intending to scandalize," but argues that "the list of serious works to his name at least requires that the charge be proven," as if scandalizing *were* sufficient basis for a crime.

Predictably, the *Times* is of the same opinion, arguing for retaining the blasphemous libel law. Undue criticism of religion, its Burkean editor maintains, "amounts to an attack on the fundamental decencies and mutual respect on which society operates, and could damage the stability of a community." However, the paper showed its liberal broadmindedness in suggesting that the law be *extended* to protect other major religions from criticism, such as Judaism or Islam, but not "minor sects."

The jury's verdict probably reflects widespread public support for Mrs. Whitehouse's view that the government "has been unwilling, by and large, to face the degree of corruption within our culture." But the government's willingness to take on the *Gay News* case, like its 1960 court case to ban publication of D. H. Lawrence's *Lady Chatterley's Lover* and its severe censorship of films, suggests that Mrs. Whitehouse's criticisms may be unfair.

The government's prosecution of the *Gay News* and Agee-Hosenball cases has without a doubt chilled the climate in which expression is exercised. Its prosecution of these cases will inhibit those who might otherwise publish sensitive or disturbing material. The significance of these cases thus touches every Briton, although distressingly few have shown awareness of the threats facing their freedom. As these cases show, self-restraint and the strength of tradition are no longer sufficient to check state power in the absence of a constitution or bill of rights. At present, public campaigns by vigilant groups like the National Council for Civil Liberties offer the best hope for staving off further threats to basic freedoms. But the NCCL has lost many battles, and the defense of human rights has proven a difficult task, even in a country in which recognition of those rights is part of the national tradition. ❏

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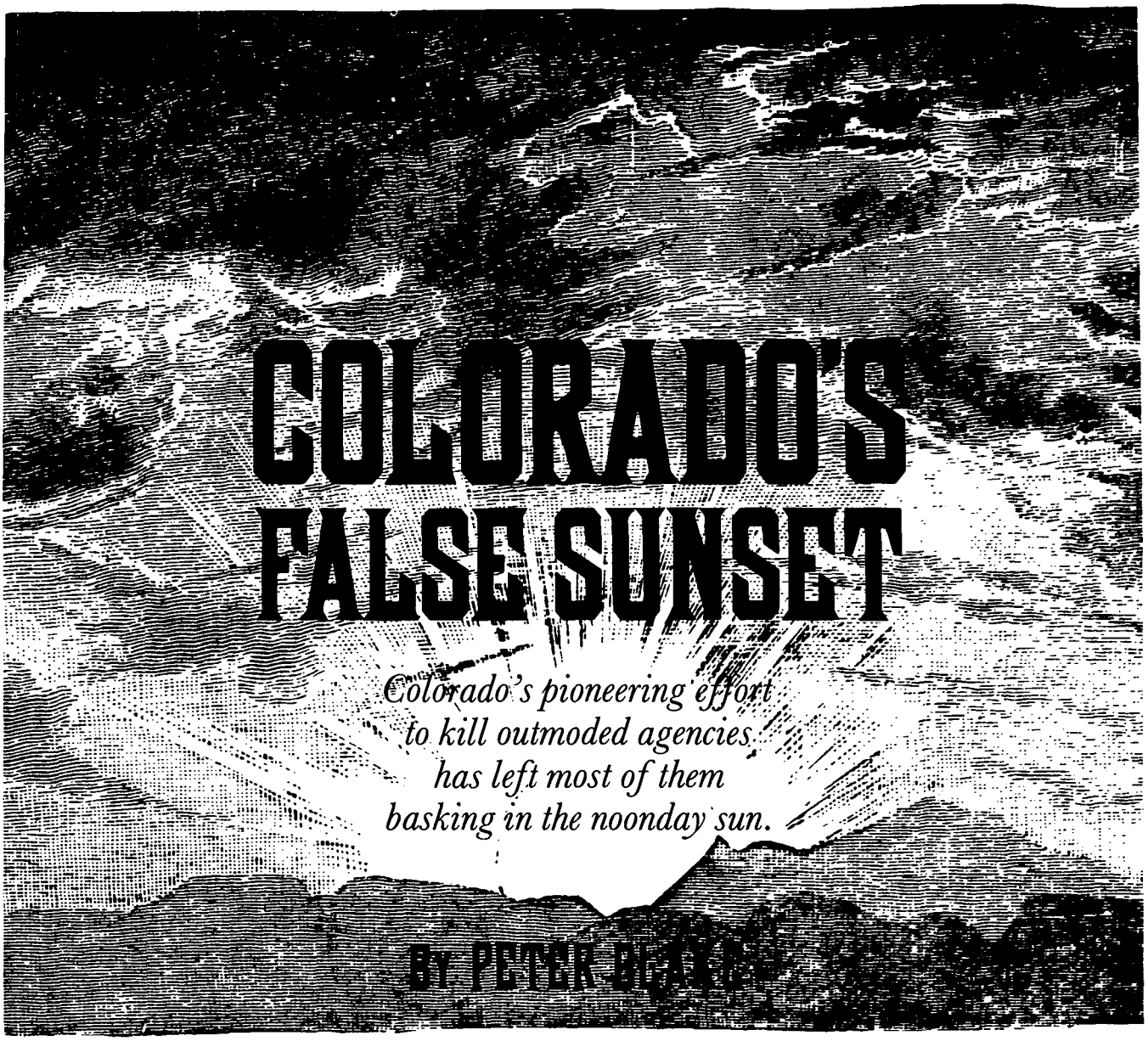

COLORADO'S FALSE SUNSET

Colorado's pioneering effort to kill outmoded agencies has left most of them basking in the noonday sun.

BY PETER BLAKE

COLORADO SENATE PRESIdent Fred Anderson was bragging recently about the success of the state's "sunset law." A prototype for this new sort of statute, Colorado's law requires that all 41 regulatory agencies justify their existence every six years or go out of business. "We kayoed the athletic commission, flushed the sanitary engineers, and clipped the barbers," he told a conference that met last November to discuss the relative merits of the two dozen state sunset laws passed since Colorado led the way in April 1976.

But Anderson, a sponsor of the bill, overstated the case. The athletic commission never did much anyway, since there is virtually no professional boxing in Colorado. The main function of the board for professional sanitarians was to bestow honorary appendages on certain government employees, like "Esq." for a lawyer. And as for the barber board, it was not clipped at all; it was merely combined with the cosmetology board (which controls hairdressers), and it is stronger than ever. In short, all the Colorado legislature has done so far is put a few dying animals out of their misery. Most regulatory agencies continue to bask in the noonday sun.

The experiment began nobly enough. Although the idea of putting a statute of limitations on government agencies is not new, it took a catchy title to make it popular. The term "sunset law" was dreamed up in the spring of 1975 by Craig Barnes, a Denver attorney connected with Colorado Common Cause. He was trading on the popularity of the so-called sunshine law, which Common Cause had promoted in 1972 as an initiative on the Colorado ballot. That proposal required that all legislative meetings, even party caucuses, be open to the public; it also provided for financial disclosures by lawmakers and lobbyists alike. It passed easily and has been working well ever since.

Barnes originally wanted to make "sunset" an amendment to the state constitution. But that would have required a two-thirds passage by the legislature as well as a majority vote by the people. Fearing that would be too difficult to obtain, Barnes's fellow Common Causers opted to go for a simple statute—a decision he now regrets.

In any case, just as the legislature convened in January 1976, the sunset proposal got a big boost from Raul Rodriguez, head of the Department of Regulatory Agencies. Complaining

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that the agencies he was in charge of "limit entry in the free enterprise system," Rodriguez said he hoped the law could be used to abolish at least 10 agencies over the next two or three years. Rodriguez was even frank about his ultimate goal. "I would hope for a manageable size of zero," he said.

When a bureaucraft proposes the abolition of his own department, he gets attention. Rodriguez's support certainly made the job of Representative Gerald Kopel, the House sponsor that much easier. The bill cleared a House committee despite strong opposition from the Colorado Medical Society, which apparently feared deregulation would mean hundreds of unlicensed physicians administering acupuncture in the streets. "The lobbying you have seen so far is a tiny gnat in the universe compared to what is coming," predicted Kopel, a Denver Democrat.

But he was wrong. Apparently the regulated businesses and professions decided to let the basic concept go by and hold their fire until their particular agencies came up for review. The bill passed the House handily, 51 to 11. What opposition there was came mostly from Republicans, who didn't like the Democrats stealing their after-dinner thunder about too much government regulation and the virtues of free enterprise. Nonetheless, the most cogent argument against the bill was made by Republican Larry Hobbs. He called it a "bureaucrat's dream" because every six years otherwise comatose agencies would wake up and devise grandiose new schemes in order to justify their continued existence.

WITH ANDERSON AT the helm, the bill breezed through the GOP-controlled Senate and was enthusiastically signed by Democratic Governor Richard Lamm on April 22, 1976. It required that a third of the state's 41 regulatory agencies be reviewed in 1977, a third in 1979, and the last third in 1981. The cycle would start again in 1983. The bill also stipulated that there would be no agency termination without legislative consideration and gave every board not renewed a year of grace in which to wind up its affairs.

After the 1976 session, both the state auditor and the Department of Regulatory Agencies began an evaluation of the boards up for review the following year. One of the most vulnerable targets was the barber board, which the auditor said should either be abolished or combined with the cosmetology board. The barber board's executive secretary, Thomas G. Patton, did not have enough to do, said the auditor. "We noted much of his time appears to be spent in idle conversation with other staff members. We have also observed this person playing solitaire on one occasion, and working on Civil Air Patrol business [as a volunteer] on two other occasions, all during normal working hours." As for the barber examination, it not only lacked uniform standards as to how to cut hair and shave beards, but 90 percent of the written questions supposedly related to the "science of barbering" (sample question: "How many bones are in the human hand?").

In early 1977 Rodriguez recommended that six of the 13 boards up for review that year be abolished. Those controlling cosmetologists, barbers, shorthand reporters, morticians, sanitarians, and professional boxers were all superfluous, he said, since they "have done more to promote the welfare of the trade than the health, safety, and welfare of the public." Furthermore, "they have probably subjected the people of this state to considerable indirect costs."

The agencies did not take the criticism lying down. "I'm going up to the legislature to fight until the last dog is dead," said 75-year-old Eddie Bohn, the Denver restaurateur who had headed the athletic commission the past 20 years. But he fought in vain. At a Senate hearing, members of the boxing community blasted Bohn and the commission for requiring amateur boxing clubs to pay the same fees as professionals, and for refusing to license black and Chicano referees.

The Senate, offended by Bohn's apparent racism, voted not only to kill the athletic commission but to wipe out most of the laws governing boxing and wrestling. Nor did the commission get its year of grace. The angry Bohn predicted an influx of "bootleg promoters—people who have fighters who are fakers and frauds and use alias names." He even predicted "there are going to be little children fighting in the amateur shows." None of this happened, and Bohn has since calmed down. "I don't think the elimination of the athletic commission is going to make any difference," he said in a recent interview. "Boxing is nothing anymore."

Also abolished was the sanitarians' board, which Rodriguez noted had not had a complaint filed with it in 19 years. The barbers' board, as mentioned above, was combined with the cosmetologists' board and ended up stronger than ever. Nominally killed was the board of shorthand reporters, whose high-priced lobbyists had successfully fought off a separate bill to do away with it in 1976. Testimony then had showed that of the 84 people taking the board's exams in June and August 1975, only three had passed—which may explain why it is so expensive to get transcripts of court testimony. But although the board was finally done away with in 1977, its functions were turned over to the court administrator for Colorado.

THE COLLECTION AGENcies board, which theoretically protects debtors from the cruder collection and repossession tactics, was transferred from the Department of Regulatory Agencies to the attorney general's office. And it was actually made larger with the addition of two "public" members.

The legislature did not vote to renew the board of mortuary sciences, but did agree to appoint an interim committee to study it during the summer and fall. Because it has a year of grace under "sunset" anyway, it remains alive at least through June 1978. The funeral board likes to talk of its role in preserving the public health, but in fact it is primarily concerned with limiting competition. As a lobbyist, it has hired an attractive woman who heretofore labored on behalf of the dog track interests. In November she helped convince the interim committee to vote 6 to 5 to recommend continuing the board. Those supporting it were all Republicans, who in this state never let their theories on free enterprise interfere with their practice. Now the lobbyist is working on Governor Lamm, because if he does not put renewal legislation on his "call" in January, the board will die in June.

Two boards were strengthened when they were renewed last spring—the passenger tramway safety board and the racing commission. The tramway board, which inspects Colorado's more than 200 ski lifts, is relatively harmless in that it does not restrict competition. It does not do perfect work—a falling gondola at Vail killed four persons in 1976—but it does at least provide a minimal check on some of the sloppier

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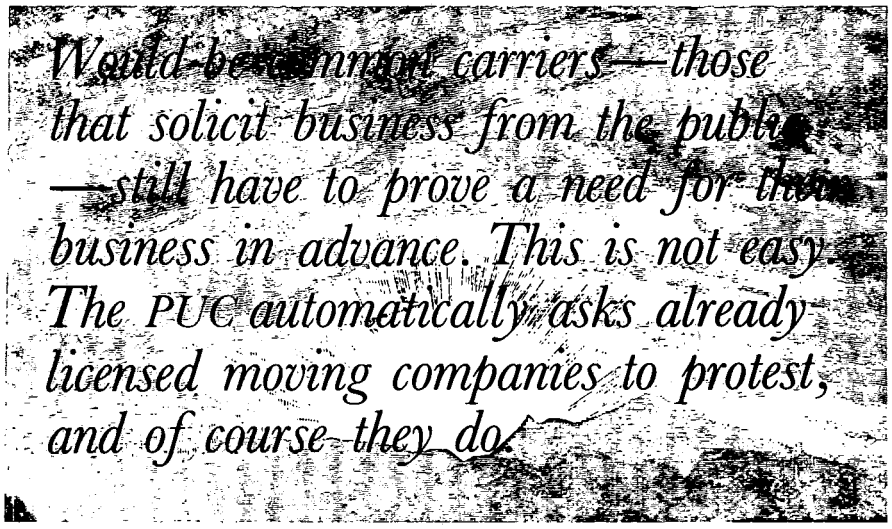
Would-be common carriers—those
that solicit business from the public
—still have to prove a need for their
business in advance. This is not easy.
The PUC automatically asks already
licensed moving companies to protest,
and of course they do.

operations. Whether it provides a net benefit to the public is another question.

No strengthening of the racing commission is going to be able to protect the race track bettor from himself—not that he deserves such protection anyway. In the first place, he should know that the state and the track are taking 15 to 16 percent off the top of the parimutuel pool. Furthermore, the quality of horse racing in Colorado is so low that track regulars insist they can actually see the jockeys pulling their mounts back when the fix is in.

The legislature, in a hurry to go home, tried to postpone review of the four remaining agencies by extending their sunset deadlines. But Governor Lamm vetoed these bills because they would have thrown the entire review cycle out of kilter forever. Thus if the four boards are to survive, they must be renewed next session, during their "grace" year.

Two of these boards are minor—the nursing home administrators' board and the board of examiners for institutions for aged persons. They will be renewed because they must be preserved in some form to meet federal Medicare and Medicaid requirements. The two remaining agencies are by far the largest of the 13 up for review: the Insurance Division and the Public Utilities Commission.

The state auditor called the Insurance Division "generally inefficient" and asked that it be strengthened. But changes are likely to be cosmetic at best. Arguments will rage over whether it should be headed by three or five commissioners, instead of the single commissioner it has now, and whether the commissioners should be appointed by the governor. Currently Colorado's insurance boss is the only one in the nation who enjoys the protection of civil service.

The Public Utilities Commission not only regulates what some might term natural monopolies, like Mountain Bell and Colorado Public Service Company, but also intrastate transportation firms, which most definitely are not monopolies. It is arguable whether the PUC even helps hold down the cost of telephones, gas, and electricity, what with the accountants, lawyers, and bureaucrats involved in the rate-setting process, but there is no question it helps maintain artificially high transportation costs.

CONSIDER THE CASE OF Richard Slatten, a gypsy trucker from Denver. Two years ago Slatten, then only 22, had a single half-ton pickup truck and one helper but no PUC license because he could not prove a "need" for his moving and storage business. "I refuse to go on welfare, so I plan to keep on working illegally until this law is changed," he said at the time.

A few months later the legislature passed the sunset law, which was advertised to be exactly what entrepreneurs like Slatten needed. Its premise was that regulatory agencies do more to limit competition than they do to help the consumer. But it seems far more likely that the sun will set on Slatten's business before it sets on the PUC.

By July 1977, Slatten's business had grown to include five trucks and six helpers, but he was turned down again for a license because he still couldn't prove to the PUC's satisfaction that he was serving the "public convenience and necessity."

UNDER COLORADO LAW, the PUC would have been entitled to have criminal charges filed. But it ran into a problem: Denver District Attorney Dale Tooley. He refused to prosecute the case. "My general feeling is there should be more competition" in the moving field, Tooley said. "We're not very sympathetic to the commission's position on this one." Besides, "it's not right to clog up our courts when we have rapes and murders to deal with."

But there was nothing to prevent the PUC from clogging up the civil docket instead. In October, perhaps emboldened by legislative inaction, the PUC filed a complaint seeking to enjoin Slatten from doing business. It is also asking a $1000 civil fine for each of six furniture moves it allegedly caught him making between October 1976 and last July. Slatten will continue to work until the case comes to trial.

Meanwhile, the PUC is prosecuting gypsy trucker Robert Hanson in Golden, one of the Denver suburbs, where the district attorneys are more cooperative. Hanson pleaded guilty and was given a suspended sentence, but he continues to work anyway, despite the fact that he'll go to jail as soon as he's caught again.

The interim committee studying the PUC has just finished its work and has recommended only minor changes. For instance, commercial carriers—those truck lines that haul goods for only one company—would no longer have to register with the PUC. But they have no trouble getting a certificate now.

Would-be common carriers—those that solicit business from the public—would still have to prove a need for their business in advance. This is not easy. Whenever an application comes in, the PUC automatically invites already licensed moving companies to protest, and of course they do. Most of the larger ones are represented by Denver lawyer Joseph Nigro, whose clout at the PUC is enhanced by the fact that he used to be its chairman.

The reason established movers object to new competition is that they do not want the value of their licenses diluted. A license costs only $40—when you can get one—but once obtained it immediately takes on a sort of political equity that makes it worth thousands of dollars, depending on the type of cargo the owner is authorized to haul and the area he can operate in. The license is easily transferable, and the PUC rarely if

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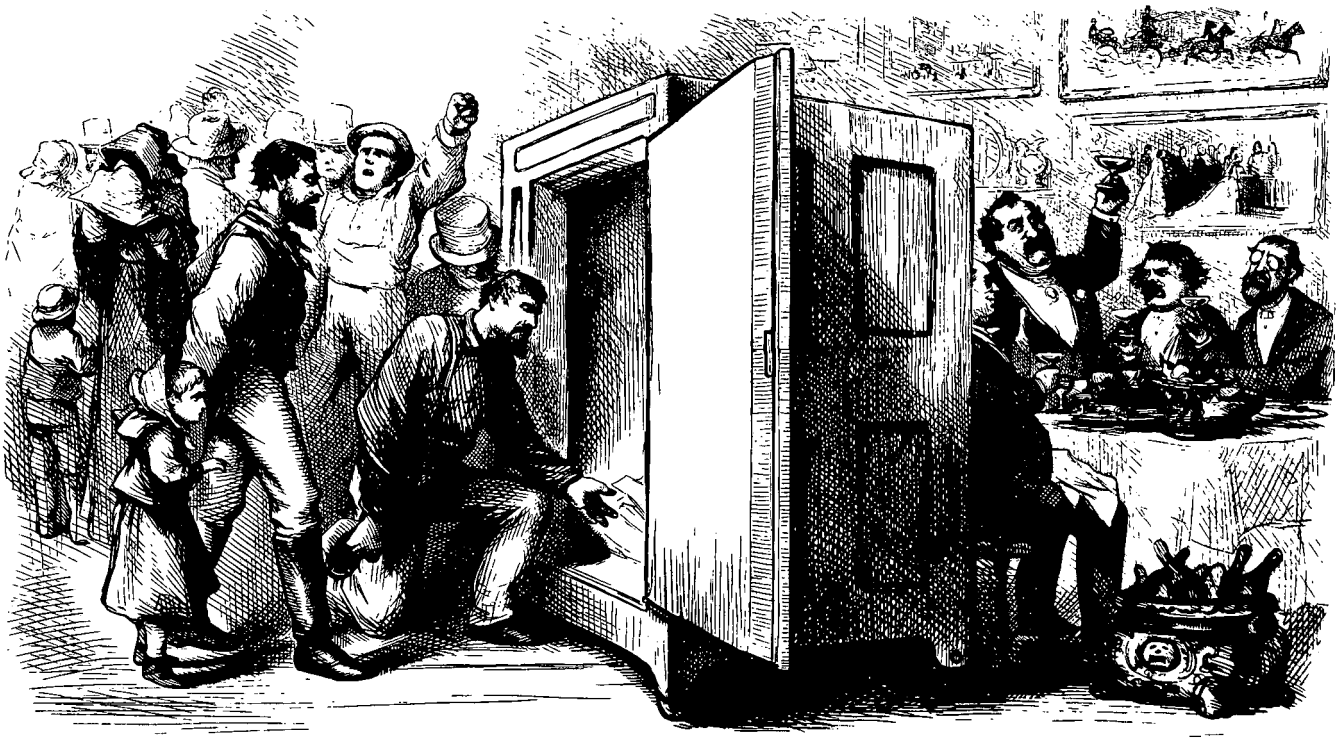

ever objects to a sale.

State Senator Don MacManus introduced a bill last session that, independently of the sunset law, would have deregulated common carriers, but he couldn't even get it out of committee. "There was a lot of lobbying going on from the trucking industry," he recalled. "I had people calling me and saying, 'What are you trying to do, kill me? I was going to sell that license when I retire.' "

As for Denver cab companies, they make the infamous New York City system look like a role model for free enterprise. In New York, it was recently reported, a taxi medallion now goes for $50,000, or more than the price of a seat on the New York Stock Exchange. But in Denver you can't get a medallion at any price. Licenses are issued not to individuals but to companies, and there are only three in town. Their lawyers are working hard to see that nothing is done to upset this cozy oligopoly.

The early line is, in short, that the legislature will reenact the PUC next spring for six more years, with only minor fixes.

It should be noted that while the legislature was grabbing off favorable headlines across the country with its sunset law, it was quietly establishing yet another regulatory body—the Hospital Charge Commission. A sort of PUC for the medical business, complete with commissioners and staff, it is supposed to review hospital budgets in advance. The avowed purpose is to hold down costs. Whether it will in the long run remains to be seen. What is certain is that the commission itself will cost something, and that the hospitals will have to bear that extra burden.

And the legislature also decided to strew flowers in the path of those regulatory board members who in the future might be put out of business because of the sunset law—they raised their per diem pay to $35. Another irony of the sunset law is that three of its most ardent supporters—Rodriguez, Barnes, and Kopel—are attorneys, who belong to one of the most regulated professions of all. The fact that lawyers are exempt from sunset provisions was bitterly and repeatedly pointed out by shorthand reporters, barbers, and others whose boards faced extinction.

Rodriguez, by the way, recently left the state to take a better-paying job in Washington as inspector general of Action, which is headed by former antiwar activist (and Colorado state treasurer) Sam Brown. Rodriguez was in large part responsible for what little success the sunset law has enjoyed, and whether his successor can keep the pressure on is debatable.

The law's supporters stress that one of the keys to its success is its limited scope. It covers only regulatory agencies, which are a small portion of the executive branch of government. Left untouched are, for example, the attorney general's office and the welfare department, which no one would think of disbanding. If a sunset law were too broad, say supporters, agencies would be routinely re-created because there wouldn't be time for adequate legislative review. This, apparently, is what is happening in Alabama, where the legislature bit off more than it could chew.

The biggest hazard to the Colorado law, however, is that it is not a constitutional provision. It is a well-established principle that one legislature cannot bind another; therefore the law can easily be modified or abandoned as soon as the thrill wears off.

IT WILL BECOME NO EASIER to get rid of agencies that enjoy the support of the industries they theoretically regulate. How many politicians, after all, can vote in favor of an abstract principle when the committee room is full of vocal flesh-and-blood voters urging them to vote against it? Abstract principle rarely attracts its own constituency. Not many consumers are going to show up in a committee room to urge support of a bill liberalizing entry into the trucking field, for instance. The fact that it may help reduce moving rates by 10 percent or so is too little a part of their lives. Yet the issue is crucial to truckers, who will show up in force. Deregulation is likely to come only when the laws restricting entry are widely disobeyed. People like Richard Slatten, who are willing to go to jail for their right to go into business, will do more to make sunset a reality than all the theoretical arguments put together. ❏

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NO COMPROMISE: Selected Writings of Karl Kraus, edited by Frederick Ungar. Frederick Ungar Publishing Co., 260 pp., $10.50.

The penman-crusader of Vienna

C. J. FOX

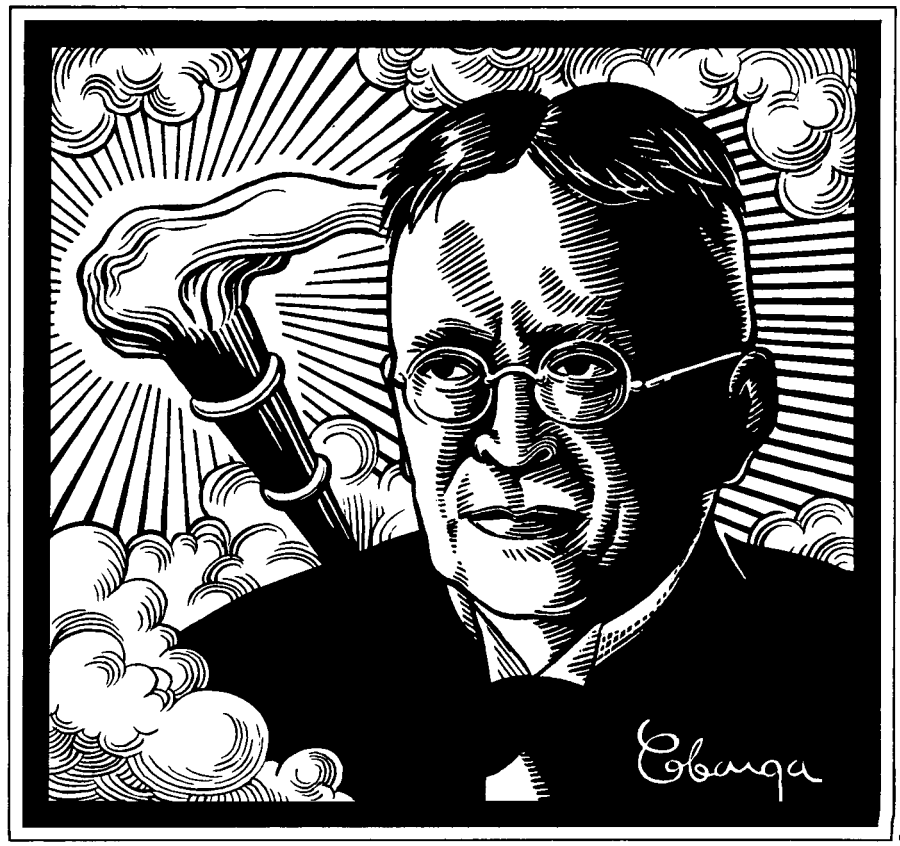
THE VIEWS OF VIENNA'S Karl Kraus on militarism and many other issues still have the ring of relevance many years after he first enunciated them. For instance: "If the statesman allows the military man to control him, he has fallen under the spell of a grade-school idol which has had its day and which, in our day, can be allowed to rule over life and death only at our peril." With America still emerging from the dual trauma of Vietnam and Watergate, it is no wonder that publishers feel there must be a wide potential readership for translations of Kraus—legendary scourge of the warmongers and the corrupt of Vienna half a century ago.

We now have had two selections of his writings and a volume of his aphorisms in less than two years, as well as an abridged version, published by Frederick Ungar, of his most famous work, *The Last Days of Mankind*. Representing another side of Kraus, arch-enemy of the psychoanalysts, is a new book by Thomas Szasz, *Karl Kraus and the Soul-Doctors*, which has sent defenders of Sigmund Freud dashing to action stations. "I understand that psychoanalysis is a big hit in the United States," Kraus once remarked. "It figures: The Americans love everything they haven't got, especially antiques and the soul."

C. J. FOX is the editor of three collections of writings by Wyndham Lewis and has written on Karl Kraus.

Yet all this flurry of publishing, strictly speaking, cannot be called a revival of Kraus (as another Krauslike hater of war, Robinson Jeffers, is being revived), since his works had previously been so inaccessible to readers with no knowledge of German—or the Vienna of his day. "No writer of comparable stature has ever been more deliberately rooted in and circumscribed by local terrain," George Steiner wrote of Kraus recently. And the latest of the new Kraus books, an anthology edited by Frederick Ungar under the daunting title *No Compromise*, is somewhat lacking, unfortunately, in explanations of that complex Viennese terrain for the reader unfamiliar with either the volcanic satirist or his near-fabulous hometown.

NO EFFORT IS MADE, AT the outset, to suggest the seething blend of artistic brilliance (Klimt, Egon Schiele, Mahler, Schoenberg, Musil, Loos), political uproar, social ferment, sexual depravity, and imperial decay in which Kraus feverishly penned his satires. This, after all, was the "research laboratory for world destruction," as Kraus himself called it. Moreover, it is questionable whether Ungar's selection should have concentrated as much as it does on Kraus's output during the period of World War I. "These were Kraus's finest hours," the editor says in explaining his choice. And he quotes a



LESLIE CABARGA

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Swiss literary historian: "With the outbreak of war in 1914, Kraus's art transcended itself. From being Viennese, it rose to become universal; from being literary, it became religious."

But it would have been fascinating to have had examples of Kraus's writings representing the period of his alienation from the Social Democrats in the 1920s and his support for the right-wing dictator Dollfuss in the early thirties. Missing, too, is any excerpt from his posthumously published onslaught on the Nazis, *Die Dritte Walpurgisnacht*. For nine months after Hitler's rise to power in 1933, Kraus kept a much criticized silence about the Nazi menace. "The Word fell asleep, as that world awoke," he wrote in a poem that appeared in his famous magazine, *Die Fackel* (The Torch), late in 1933. He also feared that if Goebbels saw *Die Dritte Walpurgisnacht*, he would order Jews into the living death of the concentration camps. Such was the dreadful epoch into which Kraus had entered, aged 60. "The satirist was fortunate in dying two years before the Anschluss in 1938, when the wealthy intellectual Jewish world from which he sprang was utterly destroyed in Central Europe," commented Frank Field in his excellent 1967 work, *The Last Days of Mankind: Karl Kraus and His Vienna*.

IN GENERAL, UNGAR—WHO, during his own youth in Vienna, attended the celebrated readings given by Kraus at that time—has produced an anthology less representative of the satirist's whole career than that edited by Professor Harry Zohn, *In These Great Times* (Montreal: Engendra Press, 1976). But Ungar has succeeded in conveying the "universal" Kraus. *No Compromise* also has on its side the inclusion of some of Kraus's brilliant aphorisms, which were relegated by Zohn to a separate, though handsome, volume (*Half-Truths and One-and-a-Half Truths*, Engendra, 1976). "Progress celebrates Pyrrhic victories over nature," declares one Kraus aphorism, prophetic of the ecological problems of later decades. In a shaft that would have delighted H. L. Mencken, the Viennese sage exclaims: "What are all the orgies of Bacchus compared to the intoxication of one who surrenders himself to unbridled abstinence!" And how enthusiastically would the critics of America's health system greet Kraus's comment on the medical profession: "Your money and your life!" Summing up his instincts as an artist, Kraus wrote in another aphorism: "I hear noises which others don't hear and which disturb for me the music of the spheres, which others don't hear either."

"To be war-weary is truly a condition that does not merit saving," Kraus insisted at the height of the 1914-18 war. "You ought always to be war-weary, not after but before the war has started."

The Kraus that Ungar gives us is the scathing campaigner against sexual hypocrisy, the caustic enemy of the Viennese press and all things journalistic, the bitter critic of the Hapsburgs and war-imposed poverty, and the courageous crusader against the Great War itself and the cause of the Central Powers. "To be war-weary is truly a condition that does not merit saving," Kraus insisted at the height of the 1914–1918 conflict. "You ought always to be war-weary, not after but before the war has started." In fact, the heart of Ungar's selection—deliberately so after Vietnam, perhaps—is his selection of scenes from Kraus's huge play, *The Last Days of Mankind*. His choice in this section is more satisfying than Zohn's, if only because we are given more of The Grumbler, the character in this sprawling canvas of the First World War who speaks for Kraus himself. "I fear our victory and hope for our defeat," candidly declares The Grumbler, one of whose major grievances against "this traders' war" was the prostitution of language into the double talk it brought about. Shades of Vietnam, one would say, at something like the following Krausian outburst: "The war has been more than sin . . . it has been a lie, a daily lie, out of which printer's ink flowed like blood, the one nourishing the other, streaming out in several directions, a delta toward the great sea of insanity." Kraus must have been one of the first to denounce air bombing and the conversion of technology into a murder machine. His attacks on the falseness and stupidity of those who ruled the home front and the battle line remind one of Siegfried Sassoon and the savage, satirical drawings of George Grosz.

PART OF THE PLAY'S fascination is the spectacle of Kraus grappling in anguished fashion with the submissiveness of ordinary men to their own murder by the profiteering organizers of "this world crime" and their ruthless toadies in government, the army, and, of course, the press. He seems baffled, even infuriated, by this docility, and gives the impression, especially in his moments of shrill sermonizing, of a desiccated, café-dwelling spirit, cut off from any understanding of the mass enthusiasms of mankind. (Base as these often, and perhaps inevitably, are, sometimes running to slaughter or collective suicide, they are not necessarily to be explained as pseudoemotions foisted on an innocent humanity by sinister social engineers.) Despite all his surface cynicism about human beings ("the devil is an optimist if he thinks he can make people worse"), Kraus seems to have remained a typical figure of the Enlightenment, convinced that man was essentially a rational animal susceptible of improvement through persuasion. This self-styled ultracynic seems incapable of comprehending man's innate and occasionally salutary perverseness. (For his part, Robinson Jeffers, equally intolerant of war, made no effort to portray man-in-the-mass as its innocent victim. The human species remained, for Jeffers, "the man-brained and man-handed ground-ape.")

But Kraus's anger at criminality and deceit in high places was itself salutary in the extreme, and continues to be so. Possibly the most impressive ingredient of his crusades is his abiding and passionate concern for language, debased as it had been into the service of vicious ends. "In the way language is used, he saw the cultural strength or weakness of a nation and the carrier of its spirit," Ungar writes in his introduction. "He firmly believed that purification of language would in turn help to purify ethics." We are reminded of the dictum of another penman-crusader, America's Ezra Pound: "Clean the word, clearly define its borders, and health pervades the whole human congeries." ❏

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KARL KRAUS AND THE SOUL-DOCTORS: A Pioneer Critic and His Criticism of Psychiatry and Psychoanalysis, by Thomas Szasz. Louisiana State University Press, 180 pp., $9.95.

Prophet of human dignity

M. E. GRENANDER

IT IS NOT SURPRISING TO FIND Thomas Szasz—who had already included Karl Kraus in *The Age of Madness* and cited him in *Heresies*—turning to a full-scale study of the Viennese aphorist and social critic. Throughout his career Szasz has been concerned with the centrality to human studies of language, used for either base or noble purposes. When the vocabulary of scapegoating becomes embedded in a society's myths, those who are in a position to apply it to their enemies can destroy them. Semantic decay festers in the wounds of a dying society; a concern for dignity, truth, and justice must be joined to a concern for speech.

Two major strands of Szasz's thought—language and psychiatric tyranny—merge in this book, which continues his historical study of oppression by focusing on the interconnections between Kraus and Freud and the other early psychoanalysts. At an early point Kraus saw that Freud was using the terminology of psychoanalysis for character assassination, but Kraus's opposition to the "soul-doctors" had never been examined with care nor given the emphasis it deserves. (One could read practically all of the increasing output on Kraus and never realize that psychoanalysis was one of the chief targets of his satire.) Szasz aims to redress the balance against both those who have "tried to erase from the history books [his] contributions to modern ideas generally and to the understanding of psychiatry and psychoanalysis specifically" and those who, although admirers of Kraus, are very uneasy with his judgments on Freud. In this sense, *Karl Kraus and the Soul-Doctors* is closely allied to *The Manufacture of Madness*, Szasz's revisionist examination of the history of witch-hunting and of its legatee, psychiatry.

His book offers two important correctives to prevailing opinions. One is a question of fact; the other, of interpretation. The fact deals with the reason for Kraus's antipathy to Freud. Kraus not only rejected the older man's overtures of friendship but attacked psychoanalysis savagely as "not a science but a religion—the faith of a generation incapable of any other." Hence Freud turned against the satirist and in 1927, in a much quoted remark, stated that Kraus stood at the very bottom of the ladder of his esteem.

The canonical pro-Freudian reason given for Kraus's disenchantment with psychoanalysis is that he was publicly "analyzed" (in absentia) by Fritz Wittels in 1910 at a meeting of Viennese psychoanalysts. Szasz, however, decisively refutes this canard, whose genesis he traces to Ernest Jones, by reviewing chronologically Kraus's comments on psychoanalysis, demonstrating that they began long before Wittels's attack and continued to the very last issue of *Die Fackel* (The Torch), his famous one-man journal, in February 1936.

GOING BEYOND THE USUAL epithets applied to Kraus—satirist, poet, and polemicist—Szasz identifies him as a "noble rhetorician" who used language persuasively to promote human freedom and dignity; Sigmund Freud is a "base rhetorician" who used language to humiliate and destroy. Given Kraus's hatred of the corrupters of language, when he perceived early in his career that psychiatry and psychoanalysis were base rhetoric, the decision to attack was inevitable. "He turned first against psychiatry, quickly recognizing its obvious brutalities, exemplified by what we in the United States call the civil commitment of the insane; and then against psychoanalysis, after he recognized the more subtle, but perhaps even more sinister, threats entailed in it, exemplified by the character assassinations of genius presented as psychoanalytic pathographies." (The reduction by Freud and his followers of great artists to psychological "cases" particularly angered Kraus; he was incensed at their treatment of Leonardo and Goethe. In Kraus's words, "nerve doctors who pathologize genius should have their heads bashed in with the collected works of the genius.") Increasingly, he recognized psychoanalysis as "an ideology destructive of individualism and personal responsibility."

So much for the question of fact. The question of interpretation has to do with explaining Kraus's lack of wide recognition today. According to accepted opinion, his German is so compact, allusive, and subtle that it is exceedingly difficult to translate; and his satire is so rooted in its time and place that his work is impossible to understand unless the reader has a detailed knowledge of the internal squabbles of Viennese journalism, culture, and politics in the closing decades of the Hapsburg monarchy.

Kraus saw psychoanalysis as "an ideology destructive of individualism and personal responsibility."

Contrary to these claims, Szasz believes that Kraus is little known outside the circles of professional German studies (Harry Zohn, a Viennese-born Brandeis professor who has written pettish reviews of Szasz's book, is the center of a small Kraus cult) precisely because "he was on the 'wrong' side in the great ideological battle of his time" that raged around Freud and psychoanalysis. Freud insisted upon and in large part attained idolatry; to criticize him is to attack a venerated god in our secular pantheon. Kraus's lifelong criticism of psychiatrists and psychoanalysts is therefore glossed over and given scant attention in the modern Kraus revival not because of his difficult German but because "his writings run against the grain of our contemporary intellectual mores."

THE TWO PARTS OF SZASZ'S book present Kraus's life and the historical significance of his critique of psychiatry and psychoanalysis, followed by translations of his writings on psychiatry and psychoanalysis, plus a few other aphorisms, not

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literally rendered—there would be no point in that—but conveying the spirit of the original. In Szasz's view, both Kraus and Freud were masters of language, but used it to different ends: Freud to set himself up as the leader of a cryptoreligious ideology annexing morals to medicine; Kraus to "demonstrate the moral and political consequences of debauching language in the service of special interests—whether political or psychiatric, legal or journalistic"—and, by purifying it, to help individuals protect themselves from linguistic obfuscation.

Some of Kraus's statements go far to explain his appeal for Szasz: "Psychological analysis performed on a private patient is a private matter between the two contracting parties; but a work of art should inspire the respect of the investigator, at the very least by its defenselessness." The first part of this sentence might have come from Szasz's own *The Ethics of Psychoanalysis,* while the second part reflects Szasz's deep admiration for artistic achievement, an admiration evident also in another Kraus passage he translates:

> The psychologists [i.e., psychoanalysts, in contemporary terminology] know just how the *Flying Dutchman* was created: "Out of Richard Wagner's childhood fantasies . . . [of] taking his father's place." However, the psychologists also insist that these same desires lurk in the minds of all little boys. . . . Hence the question [they] ought to answer is really this: What particular impressions and inclinations . . . of Wagner alone have led to the creation of the *Flying Dutchman*? After all, of all the males in the world, only one . . . has created this piece of work. Most of the others have become, out of their desire to be like their fathers, stockbrokers or lawyers, tram-conductors or music critics. Those, of course, who dreamt of becoming heroes became psychologists.

Like the subtle malice of psychoanalysis, the overt stupidity of institutional psychiatry also excited Kraus's scorn. "The psychiatrist unfailingly recognizes the madman by his excited behavior on being incarcerated." Such stupidity could pose a greater danger to human freedom and dignity than corruption: "A bigger bribe may overcome high-ranking influence and might even help a just cause to triumph; whereas profound stupidity carries deep conviction and cannot be bought off for any price. The greatest public menace, therefore, is the incorruptible psychiatric expert. . . . The very unselfishness with which . . . psychiatric outrages are perpetrated suggests that they spring from pathological imbecility rather than from any other source. If only such idiocies were not destined, in each and every case, to destroy a life!"

IN HIS OWN DAY THE GREAT Viennese daily, *Die Neue Freie Presse,* made Kraus the victim of the *Totschweigetaktik,* since taken over by the writers of psychiatric and psychoanalytic history. "As Kraus got the silent treatment from the Austrian press of his day, so his views on psychiatry and psychoanalysis get the silent treatment from contemporary commentators on his work." Szasz, however, in assigning him his proper place in cultural history, shows not only that he influenced Ludwig Wittgenstein, but that his objections to psychoanalysis were continued by Sir Karl Popper, Karl Jaspers—and Szasz himself, all of whom argue that psychoanalysis is deterministic in theory and destructive of individually in practice. Although Szasz admits that as a stylist, Kraus's direct influence is limited to the German-speaking world, his influence as a lover of language who advocated individual freedom and responsibility is at least potentially universal and timeless.

In summary, Szasz believes that Kraus was a "prophet of personal dignity" whose objection to psychiatrists and psychoanalysts was that they raised the demeaning of others into a total system. "Reducing neurotics to their sexual appetites, artistic creations to sublimated perversions, and hostile critics to irresponsible madmen, was, for Kraus, a form of bad manners . . . and one of the characteristic symptoms of the moral decomposition of the social order." Reversing Bertolt Brecht's famous tribute to Kraus—"When the age came to die by its own hand, he was that hand"—Szasz believes it is fairer and more accurate to say that "firm but virtually solitary," Kraus "tried to stay that hand." A tragic Jeremiah, he warned his countrymen against abuse of language by governments and press, politicians and psychiatrists. One of his aphorisms—"The devil is an optimist if he thinks he can make people worse than they are"—reflects the Calvinist judgment of human nature underlying Szasz's own view that the base rhetorician can move millions far more easily than can the noble rhetorician, who should be judged not by his effect on others, but by the clarity and steadfastness of his advice. Even if it remains unheeded, he is still successful insofar as he has perfected his soul by perfecting his language. By this standard, Kraus achieved his goal. In Szasz's words, "He died a semantic saint in a semantically satanic society." ❑

***TAKING RIGHTS SERIOUSLY,* by Ronald Dworkin. Harvard University Press, 293 pp., $12.00.**

Equality and rights

STEVEN STRASNICK

IF RECENT TRENDS HOLD, a new tradition in American political philosophy is taking shape on the East Coast. John Rawls's *A Theory of Justice,* published in 1972, was the first sign of this. It was followed in 1975 by Robert Nozick's *Anarchy, State, and Utopia,* and Ronald Dworkin's *Taking Rights Seriously* is the latest in this series. Coincidentally perhaps, all three works have strong connections with a certain notorious East Coast institution, which has been more widely known in recent years for its politicos than for its political philosophers. Rawls and Nozick are both professors at Harvard, and while Dworkin isn't, his book, like that of Rawls, is published by Harvard University Press. Before his recent move to Oxford, Dworkin was at Yale for many years, so that he too hails from the same ivy-covered neighborhood.

It is not, however, just pedigree that ties Dworkin's book to its two predecessors. All three may be viewed as attempts at explicating a fundamental element of American political heritage, the ideal of human rights. These political theorists share the view advanced by Rawls that "each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override." Rights, says Dworkin, are political trumps held by individuals, and they define the boundaries that may not be transgressed in the pursuit of collective goals.

The notion of human rights, of course, is not a new addition to our political vocabulary. And we don't, it seems, need a philosophical confirmation of their importance. And yet, as comfortable as we are with the notion,

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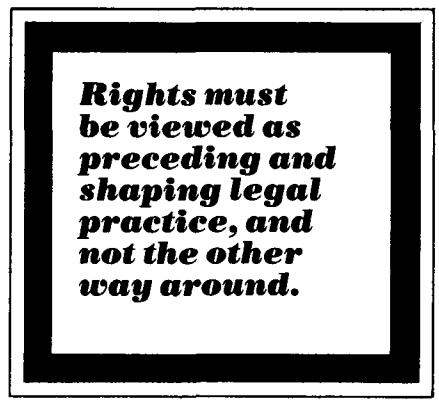
it is one in need of a philosophical home. Before the appearance of Rawls's work, the unquestioned liberal political theory was utilitarianism, a creed characterized by its single-minded pursuit of the general welfare. Articulated by the British philosophers Jeremy Bentham and John Stuart Mill in the period following the American Revolution, utilitarianism accorded rights a second-class citizenship. The general welfare or the greatest happiness, as the British writers liked to call it, was king. Individuals were allowed rights, but only as long as these rights served the general welfare. American philosophers had been sniping at this British import for years in the professional journals, but no one had produced a systematic indictment of it. Rawls was the first contemporary philosopher to attempt to develop an alternative doctrine, and Nozick followed with his own contribution.

ARMED WITH A COLLECTION of essays revolving around the notion of rights, Ronald Dworkin is the latest to enter this intellectual battleground. Indeed, the collection's title, *Taking Rights Seriously*, boldly proclaims the insurgence of Dworkin's ideas in the face of a doctrine that, in Bentham's words, pronounces the notion of rights "nonsense on stilts." Unlike his two predecessors, however, Dworkin is not content to engage utilitarianism simply on the battlefield of abstract ideas. He means to confront utilitarianism on its home turf, at the level of existing political institutions. For whatever its theoretical shortcomings, utilitarianism has always seemed adept at handling practical policy issues. Cost-benefit analysis is now the fashion, and questions of policy are decided by weighing, as "scientifically" as possible, the anticipated good consequences against the bad. Detractors of this approach are challenged to establish the relevancy of any other consideration. Dworkin takes up this challenge, and his banner is "principles." As his vehicle, Dworkin assumes the point of view of the most pervasive and concrete of our social institutions, the law. From abstract questions about the nature of legal reasoning to practical issues of civil disobedience, reverse discrimination, and the enforcement of morals, Dworkin argues that principles of individual rights are firmly entrenched within our common law tradition.

Dworkin brings the battle against utilitarianism home in another way, as well. For a large part of the book, Dworkin argues sharply against a theory he calls the *ruling theory of law*. Originally developed by Bentham, the theory is explicitly utilitarian in its formulation of the ideals the law should pursue. But this utilitarianism assumes a different character when it addresses the theoretical questions of the nature of the law and the origin of legal rights. This aspect of the theory, which is known as legal positivism, claims that legal institutions exist only insofar as they have been created by explicit political decisions or social practice. The contemporary version of positivism is due to Professor H. L. A. Hart (whose departure from Oxford was the occasion for Dworkin's arrival), and Dworkin reserves his strongest blasts for the attack on Hart's theory.



ON THE SURFACE, LEGAL positivism may appear to be an innocuous doctrine, perfectly consistent with democratic ideals. But it is imbued with the spirit of Bentham's work, and Dworkin aims to exorcise that spirit from the law. For legal positivism has the consequence that legal rights don't come into existence until they have been mandated by some form of social practice, whether it be legislative or judicial or simply the result of social acceptance. This again leaves rights tottering on stilts. The question of an individual's rights is put into the hands of those against whom these trumps were to have been played. Through long and detailed argumentation, Dworkin asserts that rights must be viewed as preceding and shaping legal practice, and not the other way around. Otherwise, he claims, there is no way to make sense either of the way judges decide nebulous questions of the law or, more importantly, of their right to decide these kinds of questions at all. The law needs rights, Dworkin argues, if it is to be more than a set of arbitrarily imposed dictums.

Having argued for the necessity of some theory of rights, Dworkin offers us a few glimpses into the one he prefers. All individuals, he says, have a right to an equal concern and respect, to concern as "beings who are capable of suffering and frustration," and to respect as "beings who are capable of forming and acting on intelligent conceptions of how their lives should be lived" (pp. 272–273). Dworkin calls his theory the liberal theory of equality, and stresses the fact that it is a theory of equality—not a theory of liberty. What is at stake when liberty is violated is not liberty itself, he argues, but fundamental values and interests whose import goes beyond liberty. These values are the ones embodied in the right to equal treatment, so that it is this latter right which determines which liberties are required by a theory of justice, and not some general, abstract right to liberty. Once we have seen the relationship between liberty and the fundamental right to equality, Dworkin argues, much of the apparent conflict between liberty and other social values will vanish, as will our temptation to use the principle of liberty to identify all the injustices we find in the political realm. In chapters on practical issues, Dworkin tries to show how his principle of equality may be fruitfully applied to analyses of practical issues of policy.

DWORKIN'S ATTEMPT TO switch the focus of rights theory from liberty to equality is a bold stroke, but it is not clear how successful it will be. For while equality in some sense does appear to be an important component of any theory of rights, it doesn't seem to be the kind of concept that can serve as a foundation for rights. When Dworkin's right to equal concern and respect is analyzed, one discovers that it is the notions of concern and respect that are doing the work, and not the notion of equality. For equality requires only that like cases be treated alike—it does not put any further constraints on the nature of this treatment. To the extent that political authority is constrained at all by Dworkin's right, it is constrained by the demands of concern and respect. But what is it about the fact that individuals are capable of living certain kinds of lives that constrains authority? Either Dworkin is guilty of trying to draw normative conclusions from purely factual premises, or else he intends his notions of concern and respect

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to embody a principle about the right of the individual to live his life as he chooses, that is, free from certain kinds of interference. If the latter is the case, of course, then Dworkin's principle of equality is actually a thinly veiled principle of equal liberty, and Dworkin is not really offering us anything new. Whatever the case, though, it is clear that more philosophical work on the foundations of rights needs to be done. The legitimacy of our political institutions may indeed require the support of rights, as Dworkin has argued. But until we can identify the source of these rights, the question of legitimacy must itself remain an open one, for without the trump of rights, our institutions need only suit themselves. Dworkin's collection of essays is a valuable contribution to our understanding of the role of rights, and it can serve as a valuable bridge between past and future thinking about their foundations. ❏

***AFTER-IMAGES*, by Arlene Croce. Alfred A. Knopf, 466 pp., $12.95.**

Why read about dance?

THOMAS RUSSELL III

IS ARLENE CROCE THE BEST dance critic practicing today? If you except Lincoln Kirstein (who has never reviewed regularly) and Edwin Denby (who seems to have stopped), the answer is surely yes. To say that is to say stingily little. I could probably expand and say she is the best practicing critic of any of the theatrical arts today, and not go to hell for it. (It is, after all, harder to get a job as a dance critic than a theater critic; in dance you're expected at least to know the vocabulary.) But *After-Images*, a collection of her dance criticism from 1966–1977, much of it published in the *New Yorker*, some in her own *Ballet Review* and elsewhere, earns her at least that meager accolade.

After-Images is not her first book. Those who know her only on Balanchine and Merce Cunningham may forget that she was nominated for a National Book Award several years ago for her book on Fred Astaire and Ginger Rogers. That catholicity of taste is one of her major virtues. Her current collection includes reviews of a dance contest and of two transvestite ballet companies, and an essay on dance in film, as well as detailed coverage of the major dance and ballet companies, from Martha Graham, Cunningham, and a host of younger choreographers to the Bolshoi, American Ballet Theatre, and (the closest thing to a focal point for the book) George Balanchine's New York City Ballet.

In her prose Croce's greatest weapon is her command of tone, which can range—completely under her control—from the lethal to the gnomic, from referring to *Help, Help, the Globolinks!* as "Menotti's gassy little fable" to describing *Who Cares* as "a classical ballet about New York, with songs by Gershwin, dances by Balanchine, and decor and costumes that look designed by Herman Badillo," to saying of the City Ballet's Christmas hit that "the annual *Nutcracker* has become a liturgical event, one whose deepest significance we celebrate in our hearts and try to keep our children from knowing."

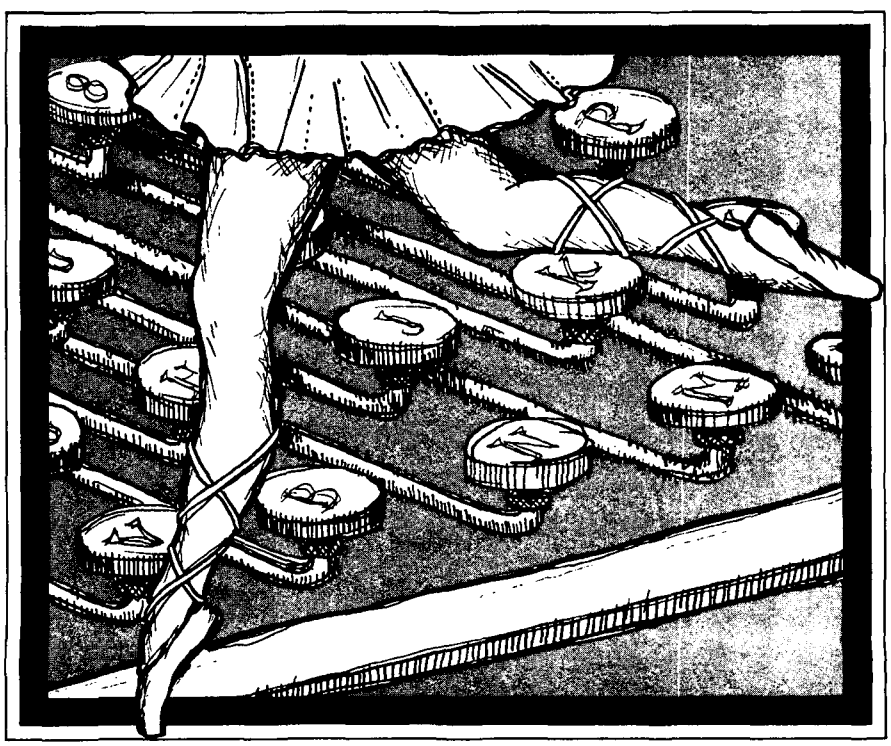
Her sharpest barbs are often her most subtle. At a performance by the Ballet of the Twentieth Century, home of that shabby little charlatan Maurice Béjart, she reports the standees' cheers as "Beige art! Beige art!" And, more cuttingly, she speaks of "Béjart, who has studied with both Brook and Grotowski and who probably saw "Le Living" when it was in Paris. . . ." Well, maybe you have to remember fighting off the giggles while a French intellectual referred in hushed tones to the absurdly overpraised "Le Living" to realize just how right the tone of that line is.

But the hard-edged vigor of her ideas counts for more than mere wit. When first skimming the book, I came on this sentence about American Ballet Theatre:

> The company has relied more and more on big-name stars whom the public would see in anything, and it hit bottom with this policy when it revived its dodo version of *La Fille Mal Gardée* for Makarova.

It says something about ABT, I suppose, but it's also a measure of the precision and accuracy of Croce's prose that I knew even without looking at the context—and without having seen the ballet—which company was meant.

LIKE MANY DANCE CRITICS, Croce writes better about dancers than about choreography, although surprisingly, not better than about choreographers. It bothers me that even her by-now-famous discussion of Balanchine's *The Four Temperaments* doesn't convince me that I could identify it on a stage if I had not seen it. (In spite of the ferociously de-



PATRICIA STUTSMAN

THOMAS RUSSELL III teaches humanities at Yale University and was editor of On Film *magazine.*

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tailed analysis, it still sounds like *Agon*.) But I am convinced that with her book in hand I could pick Nadezhda Pavlova out of a Bolshoi lineup, and almost convinced I could correctly ascribe an anonymous Balanchine ballet.

On dancers, Croce is best when discussing her favorites, like Suzanne Farrell, Gelsey Kirkland, and Natalia Makarova, and the always incredible Baryshnikov, whose sudden triumph in the West she chronicles, beginning with the Bolshoi/Kirov tour in Montreal before he defected. Croce is richly detailed on dancers, with a depth other critics might emulate. Thus we learn of Makarova that she

. . . doesn't stroke the upbeat, or break the path of a gesture in order to point it. . . . Makarova has a legato rhythm by nature, and, like most Russian ballerinas, she loves languishing tempos. She doesn't bite into a phrase—she eases through it. She doesn't give us a sharply active beat—she gives us a mild pressure and variable flow.

On choreography, on the other hand, she is frequently most incisive about her dislikes, like the work of the Stuttgart Ballet's John Cranko:

Cranko's choreographic style is characteristically linear; mass is beyond him. You get a choreography of constant calligraphic squiggles. You get mass by multiplication and counterpoint by restless shifts of line and direction. The result is bulk without solidity and animation without energy. . . . The dancers can't seem to control the space they move through, they never seem to be getting anywhere.

Croce is expert, too, at drawing larger principles from specific moments—at seeing the general issue in the individual instance. Writing of the moment in Ashton's *Enigma Variations* when Edward Elgar gets an important telegram, she notes:

That the telegram could only be read in the program notes was typical of the freedom Ashton chose deliberately to exercise in this piece—the freedom to be ironic at the expense of clarity when irony matters more than clarity.

And she is able to see some of the larger questions—such as those involving the complex symbiosis between dancers and choreography, and between stars, companies, and choreographers. Once again she is particularly sharp on this process as it is reflected in the New York City Ballet, whether noting the number of imitation Suzanne Farrells Balanchine developed after that muse of his had left the company, or answering a dancer who said that you could put a bland dancer in a certain Balanchine ballet and it would still be effective. Her reply to that was

You could and it would, but although an experienced Balanchine audience knows how to adjust its connoisseurship to levels of performance, no audience in the world likes having to keep adjusting downward. In time, the viewer comes to accept his connoisseurship as an idiotic form of Platonism, and he may stop going to the theatre, or go elsewhere for the thrill of a star performance. . . . New York City Ballet dancers believe in Balanchine devoutly, but they have sometimes appeared to be leaning too hard on the Great Provider and forgetting that the audience is really looking at them.

And writing of ABT's Fernando Bujones, she says,

He has looked smashing in everything, but isolated. There is a sense in which male classical dancers of talent are more isolated by their gifts than female dancers are. A girl can expand against the corps, or lean on a boy for support, but boys always protrude from their context. Male technique defines the figure as essentially a lonely one, set apart from everything and everyone else. The lone male figure in a stageful of women gains drama in isolation; it gains nothing from a stageful of men.

Croce is in the line of critics who believe that a society's relation to its art is in some sense a measure of moral health.

IN FACT IT'S PRECISELY Croce's concern with these questions of interrelationships that distinguishes her writing—relationships not only among those on and behind the stage, but between those on the stage and their audiences and critics. Others have considered *some* of these problems; she's not the first, for example, to damn ABT for not providing or commissioning choreography that will help develop its younger or middle-level dancers. But no one else has written quite so incisively or with such moral fervor on the responsibility of a company to develop its *audience*, and of the importance of the critic's place in that transaction. The reader should consult especially her pieces on the Joffrey Ballet, in particular the (lethally titled) "How to Be Very, Very Popular," where she says:

The difference between the Royal's *Monotones* and the Joffrey's is that the Royal practices style and the Joffrey only professes it. What it practices is consumer relations in ballet. As the season went on, I noticed that the Joffrey audience tends to applaud everything just about equally, and I wondered what you have to do to fail here. . . . You practically have to fall down for most people to notice anything wrong. As for the absence of épaulement or the absence of security and stretch in the classical silhouette, the Joffrey repertory hasn't trained its audience to see stylistic faults any better than it has trained the majority of its audience to correct them.

Or as she says elsewhere,

The patient looks healthy. The deadly infusions of silicone don't show up in glamorous soft-focus. Box-office statistics, smart publicity, and adjustable reviewing standards have set the whole ballet scene ashimmer with lesser lights, disguising the inconvenient truth that ballet is only good when it is great.

That inconvenient truth is something Croce herself never disguises, and she reserves perhaps her greatest scorn for those who do. Croce is, I think, rather rare among critics in writing really well about the process and the place of criticism. She is not afraid to set up standards, or to demand at least as much from her colleagues as from performers.

The critics are lazy, and they are also timid. Complimentary notices about almost any dancer of rank abound, but the compliments are apt to be vacant, the adjectives interchangeable: so-and-so's "icy beauty" or "thoroughbred line"—that sort of thing. What about "thoroughbred beauty" and "icy line"? And just which icy thoroughbred is being evoked here? Blot out the name and you can take your pick. The worst thing about such compliments is that they're neutral; you can't really tell how the critic is responding—whether excitedly, evasively, sentimentally, or good copy-ly. . . . I get the feeling that many critics think reviewing dancers just isn't good form because it may get personal, but surely criticism is a personal act, intimately personal, just as dancing is.

Against such "impersonal," "disinterested" critics, who will pretend "it's not their opinion, it's the public's," Croce wages an almost religious war. Here and elsewhere (as when she speaks of Makarova's expressing "*moral* concern in beautiful movement") it's not a question of esthetics so much as of ethics. Croce is firmly in the line of critics that includes Blake, Johnson, Matthew Arnold, and F. R. Leavis—critics who believe that a society's relation to its art, its ability to select the worthy from the dross, is in some sense a measure of its moral health.

CROCE'S FIRM MORAL fervor has other consequences. She is, for example, disarmingly free of that staple of the "knowledgeable" critic, backstage gossip. It's a moral position, but occasionally she's so chaste it's almost ascetic—with the strange result that she comes out sounding coy. When she talks about problems Patricia MacBride displays only when dancing with Jean-Pierre

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Bonnefous, is it really intrusive to point out that they're married, that she grew up with the City Ballet and he didn't? And it's simply unfair to say that in *Don Quixote* "giving overt dramatic expression to his theme of the elusive Ideal Woman betrayed Balanchine into unflattering revelations of self-pity. . . ." It's unfair because her point depends for its force, if not its meaning, on the fact that Balanchine choreographed *Don Quixote*—one of his few full-length ballets—for himself as Don Quixote and Suzanne Farrell, whom Balanchine had in real life recently loved and lost, as Dulcinea, and only the cognoscenti will know that. (It would not have been a matter of betraying confidences: Both items have been written about before.)

And I suspect that the purity of her vision makes her miss some things: For all her concern with the dynamic relationship between a company and its choreographers, she seems to me to miss the point of the Stuttgart Ballet under Cranko almost completely—to miss how well his choreography expressed both the strengths and weaknesses of his dancers, and how his affection converted those weaknesses into a kind of grace.

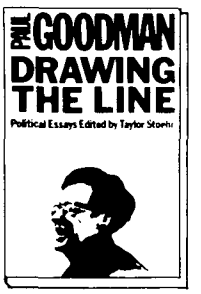
Occasionally, too, her prose turns to jelly, and we get something like this, from her review of ABT's production of *La Bayadère*:

> Actually the only word for this old-new choreography is "immemorial." *La Bayadère* (1877) looks like the first ballet ever made: Like man's—or rather woman's—first imprint in space and time.

And she frequently misuses words like "literally," as when she has Baryshnikov seeming "literally to be flying out of the nineteenth into the twentieth century," surely a feat "literally" impossible, even for so agile a jumper.

More disturbing is her recent tendency to what I can only call creeping Pauline-Kaelism. There is a chattiness, a looseness to her recent pieces, as if her prose had been infected by contamination from her *New Yorker* colleague. Too many recent pieces lack the structure and inevitability of her early work. (That may, of course, be due only to the recent pressures of weekly deadlines.) But weaknesses aside, Croce's criticism is a beacon for those interested in any of the arts, in criticism, in writing, in, finally, those things that distinguish acuity and vigor in anything from the surrounding and prevalent flab. At her best—which she achieves surprisingly often—Croce teaches us how to look, how to think, how to feel. ❑

"Paul Goodman was the sort of political clairvoyant who is ignored by the prestigiously cocksure damn fools who are regarded as responsibly authoritative voices until it is too late."—Nicholas von Hoffman



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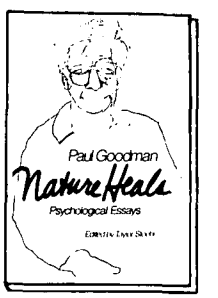

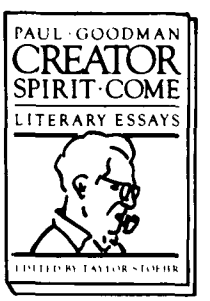

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FILM

SATURDAY NIGHT FEVER, directed by John Badham

TELEFON, directed by Don Siegel

Discos and détente

STEPHEN HARVEY

ALTHOUGH THE TRADITIONAL movie musical remains in a kind of limbo, dancing as metaphor for glamour and romance has resurfaced with a vengeance in a host of current films. *Roseland*'s denizens fox-trotted to triumph and frustration while the heroines of *The Turning Point* pirouetted to their respective destinies; in *Saturday Night Fever*, John Travolta and his fellow discomaniacs boogie toward fulfillment, and it's ironic that the most aggressively contemporary of these three movies should most successfully invoke that delirious old Fred-and-Ginger spirit.

More paradoxical yet is the fact that this theme has been welded to the kind of "little people"—*Mean Streets* melodrama associated with the likes of Kazan and Scorsese, and that the combination very nearly comes off. The tongue-tied, sensitive hero played by Travolta is by now a familiar kitchen-sink archetype: a self-defined failure trapped in a dead-end job, his family a parochial joke, his cronies a gaggle of Neanderthals whose idea of diversion is playing chicken on the Verrazzano Bridge, and humping and dumping a succession of compliant girls from the neighborhood. Yet on weekends Travolta is tranformed; surrounded by posters of "Rocky," Pacino, and Bruce Lee, he wriggles into his patterned Nik-Nik shirts and polyester pants, preparing to stake his claim as the unapproachable king of the local disco. Nothing disturbs his nonchalant self-absorption until from a distance he spies his Dream Girl (Karen Lynn Gorney) cavorting on the dance floor. She's had an intoxicating whiff of sophistication in Manhattan across the river, and is desperate to clean up her grammar and sweep away the traces of Bay Ridge once and for all. In true Astaire-Rogers fashion, she thinks he's just another creep with a superiority complex until they start to dance together—their checkered romance commences as they merge for a new-fangled tango while the camera swirls around them.

JUST AS WITH THE MUSICals of yore, *Saturday Night Fever* falters a bit whenever the hero and heroine stop punishing the parquet long enough to talk to each other. With its propulsive editing, pushy camera tricks, and overamplified disco soundtrack, the film has undeniable momentum but isn't always sure where it's going. Perhaps to placate Travolta's teen-age TV following, at times its form is nearly as gross as the adolescent antics that constitute part of its subject. Norman Wexler's script bears down a bit on the dese-dem-dose diction of the aimless illiterates he's created, and neither he nor the film's director, John Badham, can quite decide whether to milk the milieu for easy laughs or play up the pathos of the hero's blunted aspirations. After working the audience over for nearly two hours, the film winds down to a low-key and inconclusive finale, which constitutes either confusion or a perverse form of integrity on the part of everyone concerned. Moreover, like a lot of recent movies, *Saturday Night Fever* betrays a puritanical attitude about sex. The rapport between Travolta and Gorney is supposed to be poignant because it remains an affair of the spirit rather than the flesh, while the hero's cohorts by contrast indulge in soulless gang-bangs and the like; by omission, the movie implies that no form of sex exists save the sordid.

Yet I suspect that many people will be so disarmed by the dancing and Travolta's magnetism that the sur-

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rounding chaos will hardly matter. It's a difficult transition from the intimate familiarity of television to the outsized impact of the movies, but Travolta would command the screen even if the camera didn't ogle him so shamelessly from every conceivable angle. Audiences have responded to this combination of ethnic bravado and mute sensibility ever since the early Brando; although I think the boyish, moist-eyed obtuseness Travolta projects may limit him in the future, he has the panache of a born film personality and the uncluttered technique of a promising actor as well. In support, a young actress named Donna Pascow does extremely skilled work as the pudgy, raccoon-eyed girl Travolta casually rejects for his partner once her rival glides haughtily into view, while Gorney is attractively brittle even if she clearly has labored as hard to acquire those fractured consonants as her character does to discard them. As a study of teen-age malaise in the big city, *Saturday Night Fever* is no more sharp-witted than its protagonist, but it's easily the most efficiently tooled launching pad for a new star since *Rocky*.

NEVER LET IT BE SAID that even the glossiest American movies exist in a political vacuum, untouched by the course of world events. The Christmas arrival of *Telefon*, the latest Charles Bronson vehicle, proves that whatever the politics of détente may have wrought on a more cosmic plane, it certainly has dealt a mortal blow to that venerable Hollywood staple, the cold-war political thriller. Traditionally, films of international intrigue have pivoted on the conflict between the ideological forces of light and darkness; but times have changed, and the present lethargic truce between two varying shades of gray is hardly the stuff that gut-wrenching celluloid tension is made of. Thanks to this lulling state of affairs, moviemakers who dote on topical melodrama have been forced to take some pretty desperate measures in order to keep the old genre going—to name two, the resuscitation of those old nemeses, the Nazis (*Marathon Man* and the forthcoming *The Boys From Brazil*), and the feeble exploitation of their cinematic successors in terror, the PLO (*Black Sunday*).

Now that we're on relatively civil terms with the Soviet Union, *Telefon* seems almost nostalgic for the iron-curtain conflicts of yore, here updated

Traditionally, films of international intrigue have pivoted on the conflict between the ideological forces of light and darkness; but times have changed.

with a mildly ingenious plot device: While the enemy's goal is, once again, the sabotage of our national security, the culprit (the inevitable Donald Pleasence) is a Stone Age Stalinist, and his heroic pursuer a Brezhnev-era comrade (Bronson) pledged to maintain the fragile status quo between the two superpowers at all costs. The CIA meanwhile monitors the whole business in a bemused fashion; neither it nor the KGB deems it necessary to disturb their respective chief executives with a report of the potential menace involved. In fact, the only discernible differences between the two are that the KGB brass inhabit dank czarist palaces, wear gray serge uniforms and speak with impeccable British accents.

Despite this new twist reflecting the political complacency of the seventies, on the whole *Telefon* doesn't exactly radiate originality. With a faint nod to *The Manchurian Candidate* and a firm wink at that B-picture sci-fi gem *Invasion of the Body Snatchers* (directed, like *Telefon*, by Don Siegel), Pleasence's pawns of destruction are brainwashed hollow shells masquerading as prosaic middle-Americans—zombies from Moscow rather than pods from outer space.

COMPARED TO HIS DIRTY Harry of a few years ago, Siegel seems to have mellowed considerably; *Telefon* may well be a lot less morally reprehensible, but it's also conspicuously lacking in the *frisson* department. Pleasence has embodied demented malevolence in so many flaccid thrillers that by now the sight of this poached-egg-on-Milquetoast waddling from phone booth to phone booth to unleash his minions provokes, at most, an occasional guffaw. Siegel and his scenarists, Stirling Silliphant and Peter Hyams, haven't even the wit to arouse the audience by putting Bronson and the ever chipper Lee Remick, his American liaison, into some dire state of personal peril, however temporary. At the same time, it's hard to get particularly exercised over all those photogenic explosions of defense plants, army installations, and the like, which we're repeatedly told are no longer of much security value to the on-screen Establishment in any event.

Siegel does fitfully manage to juice things up with a few well-edited set pieces in such novel locales as the gelid cityscapes of Helsinki (standing in for Moscow and points East) and the *outré* atrium of Houston's Hyatt House Hotel.

Bronson isn't very much help either; as the screen's favorite age-creased, weary loner endowed with submerged passions and flinty reflexes, he's increasingly reminiscent of Sinatra toward the end of his film career —which is no compliment. Bronson's main concession to verisimilitude as a Russian undercover agent has been to smile even less often than usual while diligently ar-ti-cu-lat-ing every sparse syllable. To be fair, his lethargy is perfectly in keeping with the rest of the film; like most of its recent predecessors, *Telefon* is a multi-million-dollar wrong number.

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LETTERS

That old bogy, protectionism

THE FIRST ISSUE LOOKS GOOD, and I am going to subscribe. I am encouraged by what you say about political labels—they don't make any sense anymore. And I am doubly encouraged to see Illich's piece in the magazine. That seems to me a step in the right direction.

In your editorial about the Cargo Preference Bill [*INQUIRY*, Nov. 21, 1977], I get a whiff of Free Trade Doctrines. Nobody seems to understand that the doctrines of free trade were invented at a time when there was more work to be done than people to do it, and no one could imagine that it could ever be otherwise. They made sense in such a world. They do not make sense in a world in which, in virtually every country, unemployment is a severe problem. Closing down New England watch companies or shoe companies (to name one example) in favor of Swiss watchmakers or Czechoslovakian shoemakers, or whatever, makes sense if there is in fact something else for the New England watchmakers or shoemakers to do. If there isn't, it makes more economic sense to subsidize them as watchmakers and shoemakers than to put them on welfare.

In short, we need to do a lot of rethinking about that old bogy, Protectionism. For any poor country, or poor region of a rich country, or poor neighborhood in a city, Protectionism makes a lot of economic sense.

JOHN HOLT
Boston, Mass.

JOHN HOLT is the author of Escape from Childhood, Underachieving School, *and other works.*

Guinea pigs or volunteers?

YOUR RES PUBLICA ITEM, "Footnote to Carter's new drug program" [*INQUIRY*, Nov. 21, 1977], reprinted from the *Washington Post*, leaves out some facts. Among them:

All the prisoners who participate in American drug and vaccine testing programs are volunteers.

They are paid by the drug companies doing the research.

There are always more volunteers than available places.

All drugs and vaccines are tested for years in animals, before the first human volunteer is injected.

LLEWELLYN H. ROCKWELL, JR.
President and Editor
Private Practice

The question is, Are Prisoners ever true volunteers? As Jessica Mitford observed in Kind & Usual Punishment, *to ask the question is to answer it.–EDITORS*

A machine gun on the wall

IN HIS THOUGHTFUL ESSAY on "Handgun Control" [*INQUIRY*, Dec. 5, 1977], Don B. Kates, Jr., relied on data from America and England where guns are at least to some degree controlled. He would find Switzerland a far more interesting and useful case. There, universal military training for males (involving national service from 20 to 60 years old) places automatic rifles (M-16 equivalent) in the hands and homes of the entire population. High-rise apartments in Zurich, suburban homes in Bern, Alpine cottages in the Oberland share one common feature: a machine gun on the wall or in the corner or behind a closet door. Fifty rounds of ammunition go with it.

Nevertheless, Switzerland has had and retains one of the lowest homicide rates in the world. Moreover, what murders there are usually do not involve guns. These statistics, along with Switzerland's remarkably low rates of political violence, provide powerful confirmation of Kates's thesis: that the incidence of gun ownership and the incidence of private and public violence cannot be statistically or causally correlated.

BENJAMIN R. BARBER
New York, N.Y.

BENJAMIN R. BARBER is the author of Death of Communal Liberty.

Political clout

CONGRATULATIONS ON A FINE premiere issue. The sample size is rather small so far, but *INQUIRY* seems to have lived up to its advance publicity.

While I enjoyed the excerpt from Illich's new book [*INQUIRY*, Nov. 21, 1977], I believe he accords too little attention to the role of the state, without which no profession could achieve the fearsome powers Illich writes of. Nobody who failed to see the advantages could be forced to rely upon the opinions of increasingly narrow specialists unless these groups had attained political clout. The problem is not so much with the professions as with a state willing to grant them police power.

JOHN B. EGGER
Assistant Professor of Economic
Goucher Colleg
Baltimore, Md

The remedy is free speech

NAT HENTOFF ENDORSES Mr. Justice Black's view that no law should be made respecting freedom of the press [*INQUIRY*, Nov. 21, 1977]. But law is a general principle governing human conduct, yet many legal measures are taken apart from such general principles. Most tort cases are not based on general principle but on particular harm, injury, or damage. When "60 Minutes" distorts what a person tells its interviewer, it is doing a number of things that may be open to legal action. For example, such distortion may be proven to be injurious to the individual. It may also be proven to be fraudulent. If someone were to take Nat Hentoff's article, jumble its sentences to make it read as an endorsement of censorship, and publish the work for sale as news, similar cause for legal action could exist. The courts exist to examine such charges and to make a ruling.

TIBOR R. MACHAN
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SUNY Colleg
Fredonia, N.Y

NAT HENTOFF replies: If someone were to transmogrify my column, my constitutional remedy would be to expose that distortion by as effective speech as I could muster. It would not be, as I understand the First Amendment, to go into a court of law. Like Mr. Justice Black, I do not believe the First Amendment, as written, can or should be vitiated. All speech has to be protected or no speech is entirely safe from government action.

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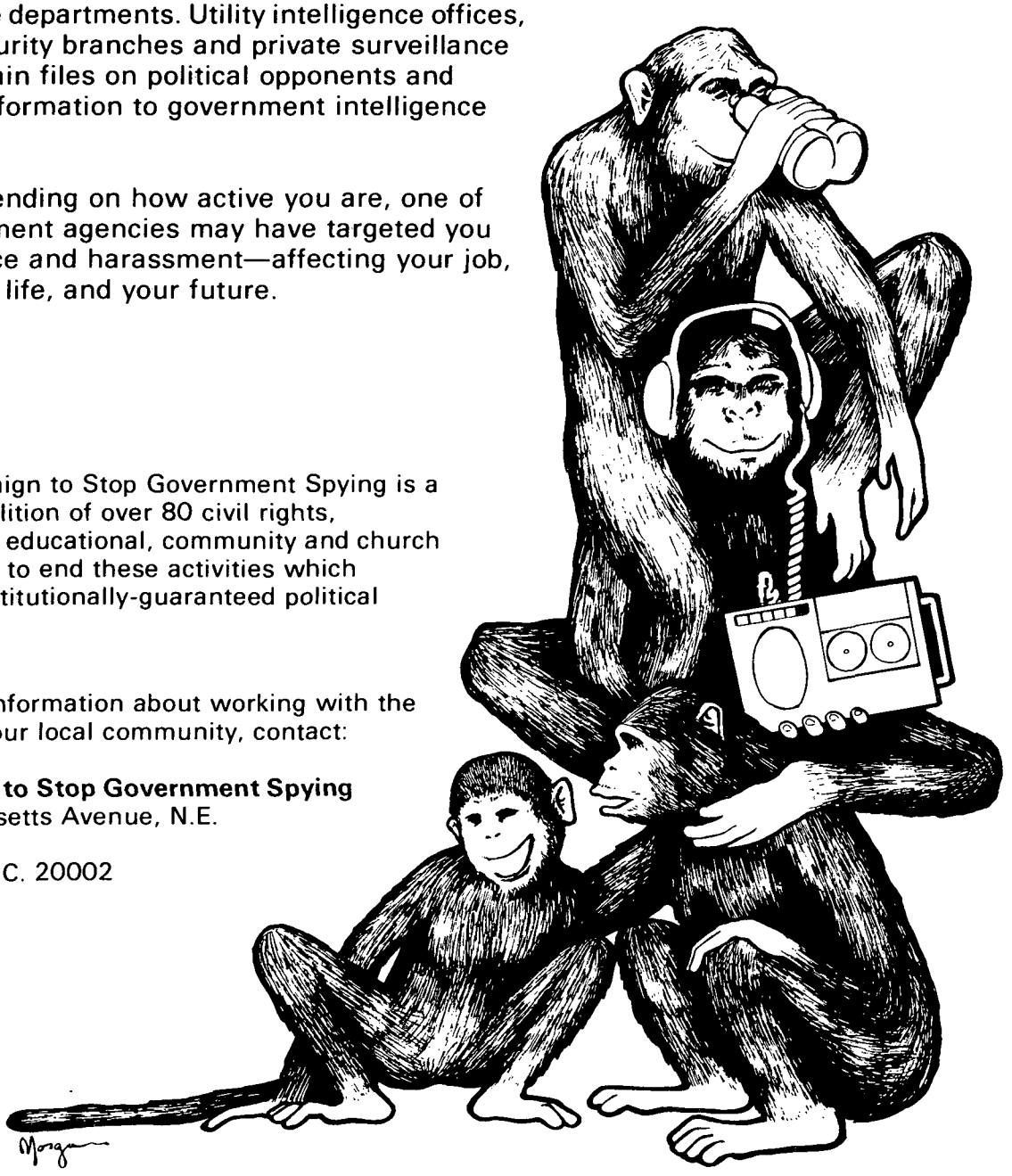
Are you politically active?

Despite official government claims to the contrary, US government intelligence abuses continue. Since January, 1977, the Senate Intelligence Committee has given its approval to six current CIA covert operations. The FBI still spies on and harasses individuals and organizations because of their political beliefs and activities. Many local and state police departments maintain intelligence offices to monitor community political activities.

If you have been politically active in this country, chances are that some government agency has a file on you—the FBI, CIA, DEA, IRS, INS, AFT and state, local and campus police departments. Utility intelligence offices, corporate security branches and private surveillance groups maintain files on political opponents and supply that information to government intelligence agencies.

And, depending on how active you are, one of these government agencies may have targeted you for surveillance and harassment—affecting your job, your personal life, and your future.



The Campaign to Stop Government Spying is a nationwide coalition of over 80 civil rights, environmental, educational, community and church groups seeking to end these activities which contradict constitutionally-guaranteed political freedoms.

For more information about working with the Campaign in your local community, contact:

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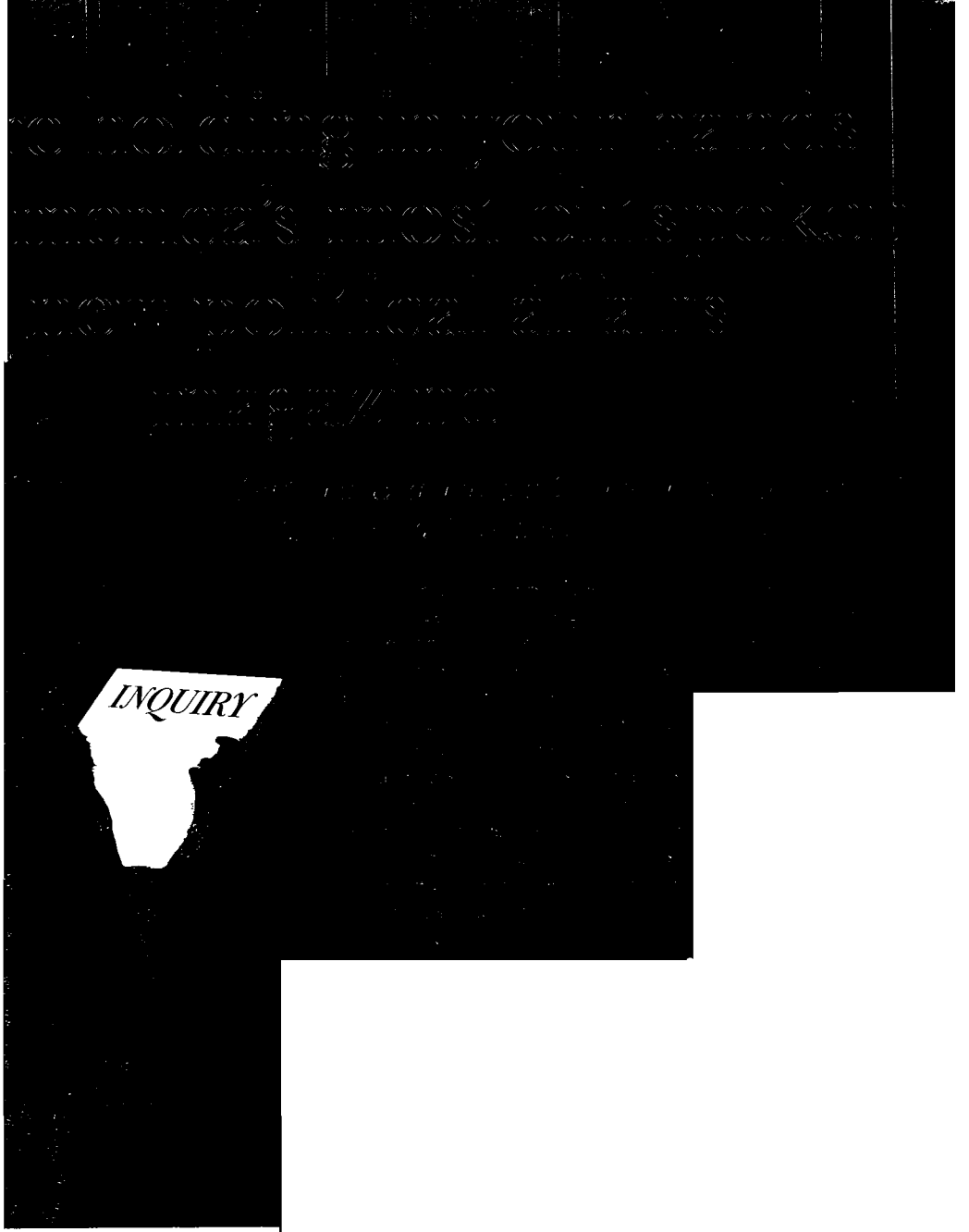

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